United States Court of Appeals
for the Second Circuit

APPENDIX

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p/5

77-4146

United States Court of Appeals
FOR THE SECOND CIRCUIT

LLOYD CARR & CO., LLOYD CARR FINANCIAL CO., JAMES A. CARR AND CHARLES P. LEMIEUX III,
Petitioners,

against

COMMODITY FUTURES TRADING COMMISSION,
Respondent.

Petition for Review of Order of the Commodity Futures Trading Commission

APPENDIX TO BRIEF OF PETITIONERS
VOLUME III
TRANSCRPT OF HEARING
March 16, 17, 21, 22, 23, 1977

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UNITED STATES COURT OF APPEALS
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SECOND CIRCUIT

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a Partnership, Lloyd Carr Financial Co.,
James A. Carr, Charles P. LeMieux, III

CFTC DOCKET NO. 77-6

VOLUME III

PART 3 OF 5 PARTS

UNITED STATES OF AMERICA

COMMODITY FUTURES TRADING COMMISSION

WASHINGTON, D.C.

I, Deedra K. Jones, do hereby certify that I am Hearing Clerk of the Commodity Futures Trading Commission, an independent regulatory agency of the United States of America; that in that capacity I am custodian of and familiar with the official public dockets of this Commission; that the annexed and foregoing are true and correct copies of the original docket, In the Matter of James A. Carr, Charles P. LeMieux, III, d/b/a/ Lloyd Carr & Co., a Partnership, Lloyd Carr Financial Co., James A. Carr, Charles P. LeMieux, III CFTC Docket No. 77-6, Volumes 1 thru 5.

Part 3 of 5 Parts

In testimony where I have
hereunto caused the Seal
of the Commodity Futures
Trading Commission to be
affixed and my name subscribed
in the District of Columbia
this 30th. day of August, 1977.

William T. Bagley, Chairman

By: Deedra K. Jones
Deedra K. Jones, Hearing Clerk
Office of Hearings and Appeals

435-557
(6)

COMMODITY FUTURES TRADING COMMISSION

- x

In the Matter of:

JAMES A. CARR, and CHARLES P. LE MIEUX III
d/b/a LLOYD, CARR & CO, A PARTNERSHIP
84 STATE STREET, BOSTON, MASSACHUSETTS 02109

LLOYD, CARR FINANCIAL CO.
84 STATE STREET, BOSTON, MASSACHUSETTS 02109

No. 77-6

JAMES A. CARR

CHARLES P. LE MIEUX III

Respondents

- x

Room 1110
John McCormack Post Office and
Federal Building
Post Office Square
Boston, Massachusetts

Wednesday, March 16, 1977

The above-entitled matter came on for further hearing pursuant to Adjournment, at 9:00 a.m.

BEFORE:

Honorable GEORGE PAINTER, Administrative Law Judge

APPEARANCES:

RICHARD LEVIE, Esq.,	CFTC, 2033 K Street, NW, Washington, D.C. 20036; appearing on behalf of the Commission.
CHARLES HECHT, Esq., and HAIG COSTIKYAN, Esq.,	Law firm of Charles Hecht, 60 East 32nd Street, New York, New York; appearing on behalf of the Respondents.

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PROCEEDINGS

9:25 a.m.

JUDGE PAINTER: On the record.

We are resuming the Lloyd, Carr case, Docket No. 77-6.

MR. LEVIE: Your Honor, two preliminary matters if I might.

Mr. Hecht filed with the Commission a motion to quash the subpoena and I would like permission to make a two minute response, orally, to be incorporated into the record as the Division's position with respect to the motion to quash.

Mr. Hecht has indicated five basic grounds. One, that service was improper and in that regard I'll hand up to the Court to be placed in evidence as if it were an attachment to a written motion an affidavit of Walter Gong, G-o-n-g, setting forth the facts during which he sought to serve the subpoena which is the basis of the motion to quash.

The second argument of Mr. Hecht in the broad category that the subpoena was unreasonably broad. He indicated that the time limit was too broad. Well, that has been narrowed from January 17 to February 23. He indicated that the scope of the subpoena was too broad. That has been limited from the original 14 items, in the attachment it was cut down to five or six.

He indicated that the Commission had access to certain documents already. That's true as to what we saw on the 20th and 21st of January, but the subpoena asks for documents going up to February 23; and he indicated that compliance with the subpoena would have an adverse effect on business.

We indicated that we were willing to accept copies and sought only to either personally be permitted or have the Court compare the originals with the xerox copies.

JUDGE PAINTER: Thank you.

Any response, Mr. Hecht?

MR. HECHT: Yes.

Thank you. Two things, Your Honor. With respect to the subpoena we preserved the right to object to the subpoena. I would like Mr. Gong -- I'll need him for maybe 15 minutes under oath -- to go through exactly who he is; what steps he is. I can see on the face of the affidavit that it's an improper service because it's a service by an employee of the CFTC.

The rules are very specific on how to serve subpoenas. And so the service of the subpoena was not even done by the right person. We have tried and worked out with the Division without waiving our right to furnish certain of the information per agreement, and most of it has been furnished. There are still two other documents outstanding which have not been furnished which we are getting reproduced.

Accordingly, I would like Mr. Gong very quickly to get him under oath. That he is an employee of the CFTC. That -- exactly where he left it, because I know it was in the outer lobby of my office because my secretary picked it up, and gave it to Mr. Costikyan who sent off the telegram.

The other thing is that this is an "expedited" proceeding, and as such it was really an unfair burden to be placed on the company on such short notice. And therefore, I'll call Mr. Gong on the stand when we go back to New York or up here, for 15 minutes. That's all I'll need.

And then basically I'll move to quash because he obviously is not a proper party to serve the subpoena since he's an employee of the party to the litigation. You must give it to a process server or a U.S. Marshal under your rules.

JUDGE PAINTER: When did you in fact receive the subpoena, Mr. --

MR. HECHT: My office received it on that day when they sent off the telegram. Received it late in the afternoon. As a matter of fact, I even called. I was back in the office. I think I spoke to someone -- someone from Washington called me that day, Milton, later in the evening.

JUDGE PAINTER: Mr. Hecht, I believe I received a copy of the telegram by Mr. Costikyan and acknowledged, at least, receipt of what he termed an improperly served subpoena.

MR. HECHT: Right.

Which is what we maintain.

JUDGE PAINTER: I am denying your motion to quash at this time, and I see no need to call Mr. Gong. If you wish to have him here, Mr. Levie, you may; but I won't issue an order for him to appear.

MR. LEVIE: I understand Mr. Hecht is preserving for the record to the Commission all his objections to the subpoena. I'm just presenting this as the Commission's case.

For that purpose I would ask that DX 25 be admitted into evidence.

JUDGE PAINTER: Okay.

Any objections, Mr. Hecht?

MR. HECHT: Well, I have objections because I think the best evidence would be his testimony; but I think on the surface this shows that it was an improperly served and invalid subpoena, because he's an employee of the

Commission.

MR. LEVIE: That would be his legal argument, of course, to the Commission.

JUDGE PAINTER: Division's Exhibit 25 is admitted into the record.

(The document above-referred to was marked Dviision Exhibit No. 25 and received in evidence.)

MR. HECHT: I should point out --

JUDGE PAINTER: Mr. Levie, would you put this with the proper --

MR. HECHT: Your Honor, I should point out for the record that although we contest it legally we have attempted and worked out with the Staff while preserving our objection the furnishing of this information.

JUDGE PAINTER: Yes, I'm aware of that.

MR. HECHT: And the Staff has taken into -- has modified the subpoena in a more reasonable manner than was originally served. Like, copies; limiting the dates; and limiting certain of the documents.

JUDGE PAINTER: I am aware there's been a effort to comply with what you deem to be an improper subpoena.

MR. LEVIE: A very brief second matter, Your Honor.

JUDGE PAINTER: Mr. Levie.

MR. LEVIE: I would like to ask Mr. Hecht whether he plans to call Mr. Charles Le Mieux III, and if not I would orally move at this time that a testimonial subpoena be issued for him and Mr. Hecht produce him.

JUDGE PAINTER: You'll be able to bring him in without the requirement of a subpoena?

MR. HECHT: He's up in Montreal now. I will call. For his protection give me the subpoena anyway, just for his protection. Because we've got some written subpoenas to present to you after the break with respect to certain people who are not employees of the Commission and then to serve them, but when I get back from the break, or lunchtime I will find out -- I know where Mr. Le Mieux is because I spoke to him this morning, seven o'clock in the hotel room.

JUDGE PAINTER: He will be available at some time during this hearing? If it goes beyond Friday?

MR. LEVIE: Or even at the end of the week, I assume, if it looks like Mr. Hecht's case will terminate quickly for some reason.

JUDGE PAINTER: All right.

Miss Chan.

Whereupon,

WAI-MON CHAN

was resumed as a witness and having been previously sworn, was further examined and testified as follows:

MR. HECHT: Your Honor, I do have one preliminary matter. Yesterday I mentioned certain Respondents exhibits which were part of the appendix on appeal. I have since subsequently obtained photostats of them so we can put them in the record for identification and then move from there.

JUDGE PAINTER: Which --

MR. HECHT: One of them was an excerpt from the General Counsel's brief dated January 14, with respect to the registration application status of Lloyd, Carr & Co.

JUDGE PAINTER: Have you copies of those for Mr. Levie?

MR. HECHT: Yes, of course I do.

And I believe they were mentioned on the record yesterday and I'd like the court reporter to mark this as Respondent's Exhibit 9 which is page 12 of a memorandum of the General Counsel furnished to the Second Circuit Court of Appeals with respect to a stay requested by Lloyd, Carr & Co., and British American relating to the registration provision, Section 32.3 of the proposed regulations. And this is page 12 of the brief and I ask the court reporter to mark this as Respondent's Exhibit 9.

(The doucment above-referred to was marked Respondent's Exhibit No. 9 for identification.)

MR. LEVIE: While these exhibits are being marked, Your

Honor, I would just note that last night I forgot -- I did not realize I had some materials of Miss Chan, two legal size pages of my handwritten notes which were turned over this morning for counsel for the Respondents.

JUDGE PAINTER: The record will show that.

MR. HECHT: Your Honor, at this time I would like to hand to the reporter to be marked for identification Respondent's Exhibit 10 which is a two page document which contains the photostat of the front and back of a check dated September 29, 1976 from Lloyd, Carr to the Commodity Futures Trading Commission filed with it's initial application as an FCM.

And I ask the court reporter to mark this as Respondent's Exhibit 10.

(The document above-referred to was marked Respondent's Exhibit No. 10 for identification.)

MR. HECHT: Your Honor, next I'd like the reporter to mark for identification a two page letter dated December 1, 1976 from Marvin Jackson, Acting Branch Chief of the Office of Audit and Financial Review, Division of Trading and Markets Eastern Region, written to Josephine Arcano of Crown Colony Options Limited dated December 1, 1976, and I ask the court reporter to mark this as Respondent's Exhibit 11.

(The document abpve-referred to was marked Respondent's Exhibit No. 11 for identification.)

MR. LEVIE: May I be heard on these, Your Honor?

JUDGE PAINTER: Have you marked the last one, Mr. Hecht?

MR. HECHT: He's marking the last one now, YOur Honor.

JUDGE PAINTER: Yes, Mr. Levie.

MR. LEVIE: With respect to Respondent's Exhibit 9, Your Honor, this objection will be based primarily on the grounds of irrelevance. This is a page from a memorandum submitted by the Commission to the Second Circuit Court of Appeals.

It's a statement of counsel, Your Honor. There has been and will be ample testimony from the stand, under oath, by witnesses as to when Lloyd, Carr & Company applied for the FCM; when Lloyd, Carr Financial Company applied for FCM. I see no probitive value to be served by entering into evidence Respondent's Exhibit 9.

JUDGE PAINTER: I feel that Mr. Hecht may be wanting to underscore a point made in that memorandum, a single page would not unduly burden the record.

Objection overruled.

MR. LEVIE: With respect to Respondent's Exhibit 10, Your Honor, there is no foundation for admitting this into evidence. Merely because it was attached to an affidavit in another proceeding filed in another Court does not in any way give this document any probitive value to the proceedings here before the Court.

Should Mr. Le Mieux or Mr. Carr wish to testify to this check then perhaps a proper foundation will be laid. At this point there is no foundation. This cannot come in on its own.

MR. HECHT: I agree with Mr. Levie, but since we've had it under discussion I thought it would be appropriate to identify it at this time, and then move it into evidence after laying appropriate foundation.

JUDGE PAINTER: I will overrule the objection and admit it into evidence at this time and bring it up to the Witnesses as they come on.

MR. LEVIE: With respect to Respondent's Exhibit 11, YOur Honor, this document is totally irrelevant to the proceeding here. It involves another firm. The matters dealt with here apply only to that firm and deal with that firm's ability to meet the minimum financial requirements of Section 1.17. Since this firm is not in any way charged with failing to meet the minimum financial requirements, again, this document has no probitive value at all.

JUDGE PAINTER: Comment, Mr. Hecht?

MR. HECHT: Yes, YOur HOnor.

I think it's very relevant because the testimony of Miss Chan as brought out in cross examination is that in the latter part of December she participated in an audit of Crown Colony and this refers back to the comment letter issued to Crown Colony before she performed the audit.

One of our affirmative defenses here is that under 5 USC 558(c) that the Agency is required to notify the registrant in writing of the deficiencies, and I want to show that, and there's already testimony that this is standard operating procedure for the Agency, which was not followed in the case of Lloyd, Carr; and that as a result of this type of letter which is what we spoke about off the record before then Crown Colony was in a position to comply with the comments of the audit division relating to its books and records.

JUDGE PAINTER: In my view the letter would be germain to the issue of what the policies of the Commission were at that time.

Objection overruled.

Respondent's Exhibit 11 is admitted into the record.

(The doucments heretofore marked Respondent's Exhibit Nos.9, 10 and 11 for identivication was received in evidnece.)

MR. LEVIE: For clarification, Your HOnor is saying germain to policies with respect to Notice, correct? Not the contents of the letter, only the notice aspects?

JUDGE PAINTER: Mr. Levie, this is the standard procedure, according to Mr. Hecht, that should have been followed. That may not be the case, but Mr. Hecht is entitled to try and show what the normal procedure should have been or was.

MR. HECHT: I believe that Miss Chan testified that the standard operating procedure was normally that a letter like this was sent out, but except in the case of Lloyd, Carr she spoke to Mr. McCarthy and did not send out a letter to Lloyd, Carr & Co. I believe that was her testimony.

Which reminds me, does anyone know where the transcript of yesterday's hearing is?

THE REPORTER: It will be here after the ten o'clock recess.

MR. HECHT: I'd like to look at it during the ten o'clock recess.

THE REPORTER: I'll get it for you.

JUDGE PAINTER: All right.

Now, let's get a little more information from Miss Chan.

Who was examining? You were, Mr. Hecht?

MR. HECHT: Your Honor, I hope not to be repetitious. That's why I wanted to look at the prior day's transcript and if I am repetitious to a degree I ask the Court's indulgence.

CROSS EXAMINATION (Resumed)

Q (By Mr. Hecht) Miss Chan, when you first -- let me ask this. In connection with a pre-registration audit is it normally the policy of the Agency to check out by another department whether or not the applicant is fit for registration? I.e., the registration division?

A Yes.

Q And who is in charge of that registration division?

A Mr. Alan Cooper.

Q And he's in New York?

A Yes.

Q And to your knowledge is there any difference in the fitness requirements as to your past history between being registered as an FCM or a CTA?

A I don't know.

Q And do you recall when you came up to Lloyd, Carr on the 20th of January whether or not Mr. Carr advised you that Lloyd, Carr Financial and both he and Mr. Le Mieux, as the principals thereof, were registered as commodity trading advisors with the CFTC?

A I don't remember.

Q Do you recall as a result of not remembering that Mr. Carr asked you to call a Mr. McCarthy to verify the status of the CTA application of Lloyd, Carr Financial?

A He did not say that to me.

Q Did you call Mr. McCarthy and ask if they already passed the normal fitness checks for the FBI and the SEC in connection with their CTA application?

A I didn't call Mr. McCarthy regarding that information.

Q Did you discuss it with Mr. McCarthy?

A No.

Q On the 20th?

A No.

Q Did you discuss it with him on the 21st?

A No.

Q Now, with respect to half options do you remember giving testimony on the half options?

A Yes, sir.

Q And do you recall at that time that the audit division was requesting a letter from applicants on whether or not they were acting as principals or agents?

A Yes, I heard it.

Q Do you know -- did anyone ever advise you of why they were asking for that letter?

A Yes.

Q Okay, were you aware that they were asking for that letter because the opinion of Judge Knapp in the regulations litigation made a distinction between principal and agent and that the General Counsel's office advised the Court that it was there position that all option dealers were really principals?

A I don't aware of that.

Q Okay, what were you aware of when you asked for that letter?

A I was just told that, like, to ask the counsel of the firm whoever has option dealings to state whether in their opinions the firm is acting as the principal or the agents in handling option transactions.

Q And did you call counsel to Lloyd, Carr with respect to that question?

A Yes.

Q And what was the name of that counsel?

A Mr. Hecht.

Q Okay, and what did you say to me and what did I say to you?

A I said "I need some written response from you to say whether Lloyd, Carr Financial Co. is acting as a principal or an agent in handling options transactions."

Q And did I explain to you what the posture of the General Counsel was with respect to their papers filed in Court, recently? And why I felt it was an improper request?

A No, I don't recall that.

Q And do you recall in that conversation or a subsequent conversation discussing half options with me?

A Yes.

Q Okay, and do you recall that we discussed that half options in my opinion, that was my personal opinion, was although it was a legal practice posed certain problems? Accounting problems and bookkeeping problems and compliance problems?

A All I remember is that you stated that -- about discretions. If Lloyd, Carr obtained discretion from the customers in exercising those options it might involve principal, agent questions. So, you advised Mr. Carr to state no more half options.

Q Because if there is a half option owned by two people and only one of them wants to sell at a particular time how do you close out the option? Remember we discussed that?

A Yes, I did.

Q And that it posed in effect, not necessarily bookkeeping problems, but posed compliance problems and you thought and I thought the industry should just outlaw half options and it would be a good idea to put that in their revised regulations? Remember we discussed that?

A All I remember you say regarding principal, agent problems. That's all. I don't know anything about compliance with the regulations.

Q Okay, and Mr. Carr sent you a letter with respect to half options that you requested? Or sent your office? You recall that? I believe it's been admitted into evidence?

A I recall that he sent -- you know, he sent us a letter, but I don't know it is upon my request or your request or somebody's. I don't know.

Q It was upon request of somebody?

A Yes.

Q And in connection with those half options did he discuss with you the fact that some of them, only half had been sold, and therefore they'd have to sell the other half just to round these options off to complete them? Because they just couldn't leave it hanging half with the person and half with the house?

A All he said is that -- he had -- when a customer wants to buy half options he informed the customer he had to find another partner for him. So, he may take a couple of days until he find another partner. Then he's going to put through that option through London.

Q Okay, and in fact those half options, the two of them you were talking about, had just been sold on the 17th or the 18th, isn't that right? Or the 16th?

A I don't know what two and a half options?

Q I believe that he brought to your attention that there were two half options to the customer's name, and inadvertently there were two full options which the house had purchased which were included two half options to customers. Do you remember that discussion?

A They sold three half options, and they were purchased some time December.

Q Okay, and did he explain to you that subsequently on the 21st that in reviewing the records that there appeared to be two complete options in the name of Lloyd, Carr which in fact were half options which had been sold to customers, and that created a problem, and that you discussed that problem with me?

A I don't recall that part. If you want you can rephrase the question?

Q Okay, you recall any discussions by either Mr. Carr or myself of the -- relating to closing out those half options by selling a half option to another party so it just rounds them off so it's complete? Rather than just leaving a half option hanging on the books?

A No, all he said is now he has three half options in his inventory.

Q That's -- okay, now --

JUDGE PAINTER: Off the record.

(Recess taken for one hour.)

JUDGE PAINTER: Back on the record.

MR. HECHT: Could I ask the Reporter to do me one favor? Because a lot of things are going through my mind during the break. Could he read back the last two questions and the last two answers?

(The previous two questions and answers were read back by the Reporter.)

Q (By Mr. Hecht) Do you recall stating before that Lloyd Carr & Co. had three half options in its inventory?

A That's what Mr. Carr stated.

Q And by inventory, that means that it was owned by the house and not a customer? Isn't that correct?

MR. LEVIE: Why not ask her what her understanding of inventory was? Or the way it was explained to her?

Q (By Mr. Hecht) Is there a difference between inventory and customers?

A Yes.

Q And what is the difference?

A Okay, I'm saying for this situation, we are matching the half options when I'm doing my audit.

Q Right.

A And it so happened we found three half options which have no partners. Let's put it that way. Then I asked Mr. Carr what happened to the other halfs. And he said that's his error. He thought that customers was to buy a whole option. So he put down whole options. And then he found out it's a half option he wants.

Q And with respect to those half options, did Mr. Carr say to you that they would do one of two things, is to discuss with you-- let me withdraw the question.

Do you recall Mr. Carr stating to you that they would close out those half options by selling them to other people so it's rounded off, rather than trying to buy back half options from existing customers?

A All I can recall is that he tried to get rid of them.

Q By get rid of them, that means sell them?

A I don't know.

Q But wouldn't that have had to occur after January 20?

MR. LEVIE: Wouldn't what have had to occur?

MR. HECHT: Getting rid of them.

JUDGE PAINTER: I think she understands the question.

THE WITNESS: Okay, I believe so.

Q (By Mr. Hecht) Now, with respect to the filing 1-FR that you were dealing with, isn't it a fact that Mr. O'Brien told you or told Mr. McCarthy that he thought everything should be done under the name of Lloyd Carr & Co.?

A No.

Q Do you know who advised Lloyd Carr to do it under Lloyd Carr & Co.'s name?

A No.

Q And now that you have handled the audit, are you aware that this was really one application as amended various times with the agency?

MR. LEVIE: Objection as to the characterization of one application.

JUDGE PAINTER: Sustained. I believe we heard the witness testify that she was concerned with a single application that came in in January.

Mr. Hecht?

MR. HECHT: Your Honor, at this time I'd moved into admission Respondents' Exhibit 12 in this proceeding the affadavit of Miss Chan filed with the United States District Court for the District of Massachusetts. I look through my records and it was not admitted into evidence in this proceeding.

JUDGE PAINTER: What is the number?

MR. HECHT: It hasn't been numbered.

JUDGE PAINTER: Would you tender this to the REporter to have him mark it?

MR. HECHT: I respectfully ask the Reporter--

THE WITNESS: That's my copy.

MR. HECHT: That's your copy?

THE WITNESS: Yes.

MR. HECHT: --Reporter to mark a nine page document filed in United States District Court for the District of Massachusetts, which is an affadavit of Miss Chan, dated February 7, 1977 as REspondents' Exhibit 12.

(REspondents' Exhibit No. 12 was marked for identification.)

MR. LEVIE: Number one, Your Honor, it's irrelevant to this proceeding what Mr. Hecht has done thus far with what has been marked as Respondents' Exhibit 12, is an attempt to impeach Miss Chan by a prior inconsistent statement. Now, the use of another statement for the purpose of impeachment does not raise the level of being properly admittted as substantive evidence in this proceeding, unless he can independently establish the probative value of this affadavit.

JUDGE PAINTER: Are you offerring it at this time?

MR. HECHT: I am, Your Honor. If you want, I can ask some more questions. But with respect to Mr. Levie's argument, it relates to the exact same set of facts in this litigation as it does in the other litigation. So if it's clearly probative for one litigation based on the identical allegation, i't's probative in the other litigation on the same allegations.

JUDGE PAINTER: Objection will be overruled. Respondent's Exhibit 12 is admitted into the record.

(Respondent's Exhibit No. 12 was received in evidence.)

MR. LEVIE: I assume, then, your Honor, that the exhibits to that affadavit are also admitted in evidence, since they were part of the same document.

JUDGE PAINTER: If you have them available and you wish to offer them in evidence, we will consider them.

MR. HECHT: Your Honor, I'm admitting the affadavit because that is the affadavit of what she signed. And that's her document which she swore to under oath.

JUDGE PAINTER: Thank you, Mr. Hecht. It's admitted.

MR. HECHT: I know. But the exhibits I don't think are really-- they're all matters of public record. I believe they're already in this case, everyone of them.

JUDGE PAINTER: Well, let's wait until they're offered.

MR. LEVIE: At this time, Your Honor, to make Respondents' Exhibit 12 a complete document as it was when filed in District Court, I would submit the nine-- ten exhibits that were attached to Miss Chan's affadavit which is now Respondents' Exhibit 12.

JUDGE PAINTER: Offer that in evidence as your own exhibit. I assume you are not offering it?

MR. HECHT: Right. And I would want to voir dire on it.

JUDGE PAINTER: I require you to offer that in evidence if you want it in the record, Mr. Levie.

MR. LEVIE: Well, for the purposes of complete cross examination, Your Honor, will you permit me to do it now so when she's examined on the affadavit, she'll have a whole document?

JUDGE PAINTER: Please do so.

MR. LEVIE: Thank you, Your Honor.

I would move the 10 exhibits attached to Miss Chan's affadavit as Division Exhibit 26.

MR. HECHT: Now, can I conduct the voir dire on that? That's what I believe Judge Painter wanted done during your reply case. Because now I have to voir dire on it.

JUDGE PAINTER: All right, Division Exhibit 26 has been offered in evidence.

(Division Exhibit No. 26 was marked for identification.)

JUDGE PAINTER: You may voir dire, Mr. Hecht.

Well, let's go off the record a moment.

(Discussion off the record.)

JUDGE PAINTER: Back on the record.

Q (By Mr. Hecht) Miss Chan, are you now looking at the exhibits to that affadavit?

A No, I don't have them.

Q Well, the Court Reporter is marking them. When he is done, you will.

Now, Miss Chan, you're not a lawyer, are you?

A No.

Q How many courses have you taken in law? You ever taken a law course in your accounting training?

A Only concerned with business contracts.

Q When did you first read this affadavit of James Carr in support of a temporary restraining order, whcih is I believe marked as Division's Exhibit 26(a)?

A Two minutes ago.

Q Pardon me?

A Two minutes ago.

Q You mean, you never read this when you prepared your affadavit on February 7?

A No.

MR. HECHT: Your Honor, based on that voir dire, I move that Division's Exhibit 26(a) not be admitted because there's no foundation.

JUDGE PAINTER: It hasn't been offerred yet.

MR. LEVIE: Yes, I'm offerring it.

MR.HECHT: That's why I'm conducting a voir dire.

JUDGE PAINTER: Objection overruled. It's admitted into the record.

Q (By Mr. Hecht) With respect to Division Exhibit 26(b), whcih is a letter dated October 12, 1976 -- a form or a letter. When did you first see that?

JUDGE PAINTER: Let the record show that Division Exhibit 26 consists of 26(a) through 26(ff).

MR. HECHT: Your Honor, we've got one page more. So as I go through them and identify the documents to conform with what I was served with, vis-a-vis what's in that document.

Q (By Mr. Hecht) Would you please look at page 26(k)?

A Yes.

Q Now, what is page 26(k) that you have?

A It's application for registration as commodities trading advisor.

Q And does it have up top the note, 11-1976?

A Yes.

Q Okay, so that is your 26(k), and that consists of how many pages? 26(l), too?

A I believe so.

Q And they are 26(k), 26(l), 26(m), 26(n), and 26(o)? I have more than five pages.

JUDGE PAINTER: Mr. Levie?

MR. LEVIE: Having taken the time to renumber these, I think there is a more expeditious way to do this. Division's Exhibit 26 were originally labelled exhibits 1 through 10. If each exhibit 1 were called 26(a), and if exhibit 2 were called 26(b), I think it would be much easier to follow because Mr. Hecht's documents also have--his version of Division 26 has exhibits 1 through 10 on them.

Then we can say, Miss Chan, you have exhibit 2 in front of you. How many pages is it?

JUDGE PAINTER: You mean the documents, Exhibit 26, consists of a compilation of prior exhibits?.

MR. LEVIE: Yes. Ten, and they are marked as exhibits 1 through 10.

MR. HECHT: Mr. Levie, that's the problem. In your papers here, the next exhibit should be this letter that I referred to October 12 as exhibit 2. And it's apparently not in the documents. What do you have that numbereed as?

THE WITNESS: 26(j).

JUDGE PAINTER: Let's go off the record.

(Discussion off the record.)

JUDGE PAINTER: On the record.

MR. HECHT: They shouldn't be put in together, Your Honor, because one is a Respondent's Exhibit. And one is the Division of enforcement's Exhibit. And they should be in two separate groups.

JUDGE PAINTER: Exhibit 26 will remain in the record.

Q (By Mr. Hecht) now, would you take a look at page 26(j), which is that? Can you identify that document?

A Yes.

Q When did you first see that document?

A Now.

Q So that's not your writing up there that said, Never got the letter?

A Okay, where?

Q See in the upper right hand corner of that exhibit?

A It wasn't my writing.

Q Do you know whose writing it is?

A No.

MR. HECHT: Your Honor, I move for the same grounds that this is the first time she's seen the document, and not on the date she filed the affadavit. There's no proper foundation for either admission in this proceeding, nor was there a proper foundation for the admission in the proceeding before Judge Tauro.

JUDGE PAINTER: The Division's Exhibit 26 will remain in the record; as you're well aware, Mr. Hecht, the rules of evidence are not applied too strictly in these proceedings. And I only become upset when the tendered items are bulky, which this happens to be, incidentally.

But it's in the record.

MR. HECHT: Your Honor, with respect to pages 26(k) and 26(l), I believe that they have already been admitted into the record with a notation that Miss Chan pointed out that, on the signature page, it has partner under the name of Charles LeMieux.

MR. LEVIE: No, Your Honor. These haven't been proferred at all by anyone.

JUDGE PAINTER: They have not yet been admitted.

MR. LEVIE: These are the CTA applications we're talking about.

JUDGE PAINTER: Thank you, Mr. Levie. But at least we'll note for the record your comments.

Q (By Mr. Hecht) Now, Miss Chan, on this document here--

JUDGE PAINTER: What's the page?

MR. HECHT: 26(k) and 26(l).

Q (By Mr. Hecht) When did you first see this document?

A Sometime around late January or early February.

Q Did you understand what this document was?

A Yes. It's an application for a CTA.

Q So you were aware at the time you filed your affadavit that Lloyd Carr Financial Co. was approved as a Commodity Trading Advisor on November 19, 1976?

A Yes.

Q And to your knowledge, has that approval ever been revoked or suspended?

A I don't know.

MR. HECHT: Your Honor, I have no objection to these two pages going in, 26(k) and 26(l).

JUDGE PAINTER: All of Division Exhibit 26 is now permanently ensconsed in the record. You may question the witness over the exhibit, Mr. Hecht.

We'll now break for lunch. We'll all return just prior to 1:30.

MR. HECHT: I believe we were having a discussion off the record that was left in abeyance--

JUDGE PAINTER: I willcontinue that after 1:30. Off the record.

(Whereupon, at 11:50 a.m., the hearing was recessed, to reconvene at 1:30 p.m. the same day.)

AFTERNOON SESSION

1:40 p.m.

JUDGE PAINTER: On the record.

Mr. Hecht?

Q (By Mr. Hecht) Miss Chan, remember we were looking at attachments to the affadavit you filed in federal court?

MR. LEVIE: Excuse me, Your Honor.

At this point, I would make an objection to any continued examination stemming from the affadavit, which is Respondent's Exhibit 12. Or the exhibits, which are Division Exhibit 26, for the following reason -- the only thing I see at a quick glance in her affadavit -- Respondent's Exhibit 12 -- to which Miss Chan has testified here today is her-- is paragraph 21(c), "That firm was failing to keep full, complete and systematic records and has failed to maintain journals or ledgers."

That's the only portion of her direct testimony that I believe is related to this affadavit.

Now, there is thus no basis for examining her on the contents of this affadavit, since the direct testimony that she has put forth is extremely limited. He, in effect, is seeking to impeach her without her having given any testimony which is impeachable.

JUDGE PAINTER: Comment, Mr. Hecht?

MR. HECHT: It is the Division not I that moved for these documents to be admitted into evidence, and I'm clearly entitled to voir dire and if something comes out in the voir dire that's detrimental to their case, that's their problem.

JUDGE PAINTER: I'll overrule the objection, partly on the basis that Miss Chan has given very short answers and she seems to be totally unhesitating in her responses. Continue, Mr. Hecht.

Q (By Mr. Hecht) And with respect to pages 26m and n, which apparently refer to an associated persons application Charles P. LeMieux, III. When was the first time that you had a chance to review this document?

A You mean this one for CTA?

Q Well, it's dated November 2, 1976. Yes, maybe it's CTA?

JUDGE PAINTER: Didn't you cover that earlier, Mr. Hecht?

MR. HECHT: No.

THE WITNESS: This thing goes along with this 26k and 1.

Q (By Mr. Hecht) So your answer would be the same, which means you didn't see this until today?

A No, that wasn't my answer before.

Q Then, I must be confused. You saw this?

A Sometime in late January or early February.

Q And to your knowledge, do you know if Mr. LeMieux's and Mr. Carr's biographical data was satisfactory to the CFTC?

A I don't know.

Q Now with respect to pages 26o, q and r, when did you first see these documents?

A You mean the form 1-R?

Q Yes, the form itself, not the 1-FR.

A Possibly at the end of January or early February.

Q But, before you signed the affadavit?

A Yes

MR. HECHT: Your Honor, based on that, I have no objection to the admission of pages 26m, n, o, p and q.

JUDGE PAINTER: We'll go off the record for a moment.

(Discussion off the record)

JUDGE PAINTER: On the record.

Q (By Mr. Hecht) Now with respect to the next page, 26(r), does this reflect data obtained by you when you were up at Lloyd Carr's on January 20th, isn't that correct?

A Yes.

Q And isn't it a fact that you never told Mr. Carr or their accountants that you had been requested to obtain this material from --by the Division of Enforcement?

A No.

Q Do you recall having a discussion with Mr. Blau of the New York Regional Office on January 20?

A No.

Q I have here Mr. Levie's notes that were given to me as a part of the Jencks Act material and would you please take a look at the material on page 2 of that and I ask you if that would refresh your recollection? Let the record reflect that Mr. Levie is handing to the witness the original of this two page document which has penciled notes apparently in the handwriting of Mr. Levie.

MR. LEVIE: Correct. Miss Chan has never seen those materials prior to just now.

THE WITNESS: What's your question?

Q (By Mr. Hecht) Now, does that refresh your recollection that you spoke with Mr. Blau about obtaining data with respect to trades around January 17?

MR. LEVIE: The first question, Your Honor, is did she speak to Mr. Blau?

JUDGE PAINTER. Yes, he asked the question and she stated that she did not recall. Now, he's asking her if this refreshes any recollection she may have.

THE WITNESS: Would you please repeat your question.

Q (By Mr. Hecht) Does that document refresh your recollection of any communications between you and Mr. Blau on January 20?

A I did not talk to him at all.

Q Did you talk to anyone at the Division of Enforcement on January 20, 1977? Relating to obtaining information for the Division of Enforcement?

A No.

Q Did you ever tell anyone at Lloyd Carr and Co. or its attorney or accountants... let me rephrase that, were you ever asked by anyone associated with the CFTC to obtain this data listed on page 26(r)? And 26(s)? Which is a schedule apparently of orders taken by Lloyd Carr and Co. between January 7, 1977 and January 20, 1977?

A Would you repeat the first part of your question.

Q Did anyone ask you to obtain this information?

A Yes

Q Who?

A Mr. McCarthy

Q And did Mr. McCarthy explain to you why you should obtain such information?

A No.

Q And you never asked him?

A No.

Q Is it normal audit procedure to make this kind of compilation for a three or five day period?

A Let me put it this way, okay? This computation not set for three or five days.

MR. HECHT: it's for ten days.

THE WITNESS: Yes it's a general procedure. I'm an auditor, okay? I'm not just doing the audit for that day and any period subsequent to that period, I'm responsible for it.

Q (By Mr. Hecht) Were you aware that as of January 17, commodity options dealers were supposed to be registered as futures commission merchants?

A Yes.

Q Did you ever specifically ask Mr. Carr or anyone associated with the company of the trade data pertaining to these particular dates?

A What do you mean by that?

Q Isn't it a fact that you never advised anyone associated with Lloyd Carr and Co. that you were making this kind of compilation?

A I told Mr. Carr and also Mr. Winston that

Q That you were what?

A That I am making a sampling of what trade they have from the tenth on.

Q Did you tell them the reason why you picked those dates?

A I don't even know what reason behind it, if I knew I would take copies of those things, instead of copying down this.

Q Okay, Mr. McCarthy just told you to do it and you did it?

A Yes.

Q If you take a look at Mr. Levie's piece of paper there, underneath the first item said, would obtain information for other divisions.

A Okay.

Q Now is the Division of Enforcement considered a separate division from the Audit staff?

A Yes.

Q And so you knew on the 20 and 21, that you were also-- that in addition to a preregistration audit, you were also looking for material for the Division of Enforcement?

A Please repeat.

JUDGE PAINTER: Before you repeat, he wants to know whether you inferred from Mr. McCarthy's request that you were getting this for the Division of Enforcement or were you in fact getting this for Mr. McCarthy alone?

THE WITNESS: I knew it was for the Division of Enforcement.

Q (By Mr. Hecht) Isn;t it a fact that you never told anyone at Lloyd Carr or its attorney or its accountants that you were so obtaining information for the Division of Enforcement?

A We are not obligated to tell unless they ask.

Q Would you please answer my questions? Yes or no.

A Will you repeat that

Q Isn't it a fact that you never told anyone at anytime that, with respect to your audit, that you were obtaining information for the division of enforcement?

A Yes.

Q You mean, that you didn't tell anyone?

A Yes, I did not tell anyone.

Q And isn't it a fact that when you met Mr. Carr at the beginning ofyour audit on January 20, you explained to him that you were coming up in connection with a pre-registration audit?

A Yes.

Q And a pre-registration audit is a clearly understood term, isn't it?

A What you mean by understood term?

Q Well, that the purpose of the audit was to see whether or not Lloyd Carr & Co. satisfied certain requirements in order to be registered as an FCM?

A Yes, to see whether the firm-- applicant is comply with every single section of the Commodity Exchange Act and its regulations.

Q But your responsibility is the books and records, and the minimum capital, isn't it? Minimum financial requirements?

A No.

Q Have you ever been an employee of the division of enforcement?

A No.

Q Have you ever been asked to be an employee of the division of enforcement?

A Yes.

Q Was that before January 17, 1977, or after?

A I-- I don't recall when. But my answer is I rejected it.

Q What?

A I do not recall when.

MR. HECHT: Your Honor, I move for the quashing of these two documents, 26(r) and 26(s), on the grounds that they were obtained by the use of false and misleading devices. And tht any documents obtained in such a way are fruits of the poisonous tree.

JUDGE PAINTER: I don't quite see things as you do, Mr. Hecht. It's my understanding this witness has testified that she did secure, at the behest of Mr. McCarthy, certain information from Lloyd Carr & Co. It is also my understanding that Mr. McCarthy is not in the division of enforcement.

The witness has further testified that she at least believes that Mr. McCarthy was requested by someone in the division to obtain this information. But this witness was simplly carrying out the orders of her superior.

I will deny your motion. Your reasons are noted in the record.

Q (By Mr. Hecht) One other question, Miss Chan. Were you aware on January 20 or 21 that the division of enforcement was considering taking any action with respect to Lloyd Carr?

A No.

JUDGE PAINTER: Finished with the witness, Mr. Hecht?

MR. HECHT: Your Honor, I'm just voir diring her on their profer of evidence in the middle of my examination. You had suggested that they try to admit this on redirect and Mr. Levie insisted. So I've got to go through this.

Q (By Mr. Hecht) Now, with respect to pages 26(t), (u), and (v), when did you first see this document?

A Okay, on or about the 25th of January.

Q And have you compared this with the original on file with the CFTC?

A I just take -- you know -- a quick look at it. And I notice some changes.

Q Now--

A Excuse me. What you mean by that question?

Q I said, this apparently is a copy of an application for registration as a futures commission merchant, which was filed as exhibit7. And it's dated January 24, 1977.

Have you compared the copy at any time with the original on file with the CFTC?

A This copy, no.

Q And are you aware of the circumstances surrounding the filing of this particular document by Lloyd Carr & Co.?

A No.

Q Are you aware of the-- that this was done at the request of Mr. O'Brien; because some things were in Lloyd Carr Financial and some things were in Lloyd Carr & Co., the bank accounts?

MR. LEVIE: She's already testified she's not aware of the circumstances surrounding the filing of this application.

JUDGE PAINTER: Sustained.

Q (By Mr. Hecht) With respect to item 26(w), was this--

MR. HECHT: Your Honor, I have no objection to 26(w) but I want to ask some questions on it.

No objection to 26(x), Your Honor, since this is apparently an official certification of a record. And I understand that Miss Chan is not in a position to certify.

Q (By Mr. Hecht) When did you first see the document which begins at 26(y) and ends at 26(ff), which is a copy of the complaint in this action?

A Some time around Jan-- February, early February.

Q Was that before or after you rendered your report of February 2, 1977 to Mr. McCarthy?

A Yes, it's-- wait.

Q : This complaint, did you see-- let me rephrase that. Did you see a draft of this document before you submitted your letter to Mr. McCarthy?

A No.

Q Did you discuss the letter that you sent to Mr. McCarthy with anyone at the division of enforcement before you gave it to him?

A Gave what?

Q You prepared to-- you prepared a report to Mr. McCarthy dated February 2, 1977. Prior to the time you gave that report to Mr. McCarthy, did you discuss this with any employee of the division of enforcement?

A Regarding content of my report?

Q Yes.

A Yes.

Q Was that prior to the time the report was typewritten up?

A About the same time.

Q And that was prior to the time of this complaint?

A Yes.

MR. HECHT: Your Honor, let the record note that the document 26(y) and through (ff) is a copy of the complaint, which was obviously a matter of record in this hearing. I have no objection to it, to its admission as part of

Division of Enforcement's Exhibit 26.

I understand that you, in effect, have admitted all the exhibit, Your Honor?

JUDGE PAINTER: Exhibit 26 has been admitted in toto.

(Division Exhibit 26 was received in evidence.)

Q (By Mr. Hecht) Now, do you recall testifying-- with respect to Crown Colony, that audit that you referred to the other day, that was in the latter part of December, wasn't it?

A Okay, I did the audit around the week of January 10. For that week.

Q And what was-- that was after-- isn't it a fact that that was after the staff had furnished to Crown Colony Mr. Jackson's comment letter of December 1?

MR. LEVIE: Objection. Irrelevant, Your Honor.

JUDGE PAINTER: You're trying to establish procedure, Mr. Hecht?

MR. HECHT: Yes.

JUDGE PAINTER: I think he's entitled.

Answer if you can.

THE WITNESS: Okay, I-- I do not know whether Crown Colony received the letter or not. But to my knowledge, I did know that we did send them the letter.

Q (By M.r Hecht) And isn't that one of the things you checked when you went back there on the audit, to see that they had made the corrections and complied with the suggestions in your comment letter?

JUDGE PAINTER: Whose comment letter?

MR. HECHT: The audit bureau's-- the audit division's comment letter.

THE WITNESS: Okay, my instruction was to do an audit-- pre-registration audit.

Q (By Mr. Hecht) Another one?

A Yes.

Q For crown Colony?

A Yes.

Q And at the time you did that audit, did you have in your possession a copy of this comment letter? Why don't you take a look at the letter? I believe it's our exhibit no. 9.

MR. LEVIE: 11.

MR. HECHT: 11.

THE WITNESS: No, I don't have.

Q (By Mr. Hecht) Pardon me?

A I don't have this letter in my possession.

Q No, but were you aware of that letter when you went back and made the audit?

A I only aware that we sent them a letter. But I did not know what was in the letter.

Q Does the audit department maintain a correspondence file with respect to each applicant or registrant?

A Yes.

Q And wouldn't something like this normally be in the file?

A Okay, yes. But we have so many correspondence, and sometimes you may not file it in the file yet. It may be just getting it, so I cannot search everywhere to find it.

Q Did you ever discuss that letter with anyone in the audit division prior to your subsequent audit?

MR. LEVIE: Your Honor, I believe -- with all due respect -- he's going well beyond the testimony. Mr Hecht's position, as I understand it, is that the Administrave Procedure Act requires notice. And that the Commission failed to give notice in this case.

Miss Chan has testified that notice was not given to Lloyd Carr. Now, either hte lack of notice was proper, or improper, with respect to Lloyd Carr. What was done with Crown Colony has nothing to do with it. Either the Commission complied or failed to comply with the statute. It has nothing to do with standard policy.

JUDGE PAINTER: Mr. Levie, I think the policy of the Commission is relevant to the issues in this proceeding. I am not certain Mr. Hecht is going to get any satisfactory answers here. But I think he's entitled to find out what policy this Commission has ordinarily followed in the case of an audit, and where there are deficiencies and what happened.

He's interested inthe compliance. A period of time in which to comply. And as I understand it, Mr. Hecht, you're contending that Crown Colony in due course was given a period of time in which to comply.

MR. HECHT: And, in fact, they did comply given the opportunity.

JUDGE PAINTER: I think that the auditor who goes out, if they were given instructions to check to see whether compliance had been made, then Mr. Hecht is entitled to know whether this was the case or not.

MR. HECHT: Thank you, Your Honor.

THE WITNESS: Would you please repeat your question?

JUDGE PAINTER: May I ask for my own interest -- I don't want to intrude -- what we want to know, Miss Chan, is, when you went out on your second visit to Crown Colony you were to make a second audit. Did someone in your branch talk with you about what to do when you got to Crown Colony? What to look for to determine whether they now were in compliance?

THE WITNESS: Okay, I was told to see whether they meet the $50,000 minimum financial requirements.

Q (By Mr. Hecht) And when you went back to them in

January, at that time, what was the position of your division with respect to taking haircuts on unrealized customer's equity?

MR. LEVIE: Again, Your Honor, we're not alleging that Lloyd Carr did not make the $50,000 minimum--

JUDGE PAINTER: I think you're getting a little off base here now, Mr. Hecht.

MR. HECHT: Your Honor, she--

JUDGE PAINTER: This is clearly beyond the procedure.

MR. HECHT: Well, I don't think it is and I will explain why in a proffer of proof.

One of the problems here, and she pointed it out in her direct testimony, is that in their January application--first January application they had put in as an asset unrealized customers equity. And then made a contra-entry on the liability side, which she said was wrong. And I want to show -- and I think it's very important -- that, if to the option dealers what was out in the industry then was that computation was required, I think it's very important to show that Respondent made a good faith attempt to comply with basically what was the rumor mill about what the audit division was requiring.

JUDGE PAINTER: I'll sustain the objection here. I think you've gotten out of this witness what you wanted, Mr. Hecht. And I think if we get into the argument over what is-- what were the capital requirements, we're really going outside the scope of the issues here.

MR. HECHT: Let me ask one question. I think I can tie up the relevancy.

Q (By Mr. Hecht) In order to make-- in order to compute a percentage of customers equity, does that require setting up a separate set of books or a separate journal?

A According to my opinion, yes.

Q Thank you.

And thus, if in fact this computation had to be made by commodity option dealers, it would require them to set up such a journal?

A Okay, I'm saying -- like -- just some kind of records. Okay, you don't have a-- you don't have to cause a journal. But it has to be, like, systematic which I could enable me to just take a look at it and be verify it. It doesn't mean I have to be looking all over.

Q What you want to see is in one central location, the basis underlying their daily computation of customers equity?

A Yes.

Q Now, with respect to the assets listed on Division of Enforcement Exhibit 23, isn't it a fact that the problem -- if there was a problem -- related to the pre-paid assets of Lloyd Carr?

A Yes.

Q And isn't it a fact that the-- that's a relatively insignificant amount?

A My job is to see whether this is a truly reflect the financial condition of the firm, as of that date. I mean, I don't care how significant it is, but it has to be true.

Q Would you say Lloyd Carr is a fairly substantial company?

A What do you mean by substantial?

Q Would you say that the total assets listed on that Division of Enforcement Exhibit 23 are how many hundred thousand dollars?

JUDGE PAINTER: Do you have Exhiibit 23 there, Miss Chan?

THE WITNESS: Yes.

MR. HECHT: Can I approach the witness 'cause I can't find mine. And it'd save a lot of time.

Q (By Mr. Hecht) That shows total assets of about $396,000. And what does it show for pre-paid expenses?

A Around 21,000.

Q And that is substantially less than 10% of the total assets, isn't it?

A According to this 1-FR, yes.

Q If the pre-paid expenses were more, that would be better for the company, wouldn't it?

MR. LEVIE: Objection. Irrelevant.

JUDGE PAINTER: Sustained.

Let's move on, Mr. Hecht.

MR. HECHT: Your Honor, you said before that we were going to break at around 2:05.

JUDGE PAINTER: Yes, about right now.

Off the record.

(Short recess.)

JUDGE PAINTER: Back on the record.

MR. HECHT: Could the Reporter read back the last question and answer. I believe we're on cross now and not voir dire of the exhibits.

(The previous question and answer was read back by the Reporter.)

Q (By Mr. Hecht) Now, during your audit up there, do you recall discussing with Mr. Carr that, with respect to a bank account in Greenwich, that it was listed in the name of Lloyd Carr & Company -- spelled out -- rather than Lloyd Carr & Co. -- C-o.?

A Are you saying sometime between the 20th and the 21st?

Q Right.

A No.

Q Did you discuss it with him subsequently?

A Yes.

Q Was that in the conversation on the 24th or 25th, when you wanted certain confirmation, certain letters, certain bank accounts, the names in the bank accounts were--

A Yes.

Q Do you know who requested that the company change the name of that account from company -- spelled out -- to c-o.?

A I don't know.

Q You don't know who requested it?

A No.

A But you asked for these confirmations on the 25th with respect to these four banks? Remember, you testified as to that?

A Yes.

Q And to your knowledge, in fact, did Lloyd Carr make the requested changes in the title of the accounts?

A Let me check my records, okay?

Q Okay.

A Okay, according to my records, I did not receive a confirmation from Union Trust Company regarding the change of the name.

Q Is this because the company's account in Union Trust Company was closeed out?

A I dont know it was closed out.

Q So you're not aware of any facts relating to the company's relationship with Union Trust Co. after

January 20, 21?

A Until the day I hear the testimony over here.

Q Other than that, you're not aware?

A No.

Q But with respect to the other three requests, did Lloyd Carr & Co. comply with your request? And it was subsequently confirmed by you that they did so comply?

A Okay, of the four confirmations I sent out, I only got two answers back.

Q And those two answers, with respect to those, did Lloyd Carr and Co. comply with your request? Or the request of your division?

MR. LEVIE: Can the record be a little clearer on what the requests involved and to whom they were made, and who was expected to comply with them?

JUDGE PAINTER: Miss Chan, you've testified that you made four requests and two complied-- two were complied with?

MR. HECHT: She received confirmation that two were complied with.

THE WITNESS: Okay, let me make this straight, okay. Like, I do not know who requests who to change the name from Financial Co. to Co.-- & Co. But I was told to send confirmations to these depositories to confirm that the name had been changed to & Co.

Q (By Mr. Hecht) And you sent these confirmations to these depositories. And two of them answered and two of them did not?

A Yes.

Q Of those two that answered, did they advise you that the changes had been made?

A Yes.

Q And that was the only request that you made of Lloyd Carr & Co. after January 21, isn't it?

A I presently request?

Q Yes.

A Yes.

Q Now, with respect to the liability side of the 1-FR information--

A Which 1-FR?

Q The one that-- the original one.

A You mean Exhibit--

Q 23.

A Okay.

JUDGE PAINTER: What was your question?

MR. HECHT: I asked a question, I thought.

JUDGE PAINTER: Would you restate it?

Q (By Mr. Hecht) With respect to the statement as to liabilities on Division's Exhibit 23, is it a fact that all of the accrewed liabilities were properly reflected on such filing?

A No.

Q Which accrewed liabilities were not properly reflected?

MR. LEVIE: Same objection as to irrelevance, Your Honor. This goes to whether the financial data met the 50,000 or did not--

MR. HECHT: No, it doesn't.

JUDGE PAINTER: Mr. Hecht, what is the point?

MR. HECHT: The point is to show that, with respect to its books and records, I'm trying to confine where -- if anywhere -- she felt that they were not accurate. She has testified, on going through a report on the liability side, there's apparently a statement in her report that says -- on page 6 -- liabilities were accrewed by Lloyd Carr's outside accountants and accepted as such as of December 31, 1976.

JUDGE PAINTER: All right, overruled.

And please answer, if you may.

THE WITNESS: Okay, that statement I made over there does not pertain to this original 1-FR.

Q (By Mr. Hecht) Which 1-FR does it pertain to?

A The Division Exhibit 24.

Q And isn't it a fact that the only two changes from the liability side in Division Exhibit 23 and 24 was the elimination of an item called, payable to customers, representing unrealized equity in customers accounts? And a $517 adjustment for options sold but not yet bought?

A No.

Q The $8851 which is reflected in there for an adjustment for the amount of taxes due?

A Okay, combine all the statements you made, yes.

Q And that was discussed between you and Mr. Winston about the accrual of taxes?

A Okay, Mr. Winston told me that-- or he informed me that partnership does not have to accrew any income tax.

Q Right.

A However, when they prepared original 1-FR, they just put that in as one of the accrewed liabilities.

Q So what they did is that the company overstated its liabilities by saying that these were taxes payable by the company rather than the individual partners? In their original filing.

A Yes, but-- can I say something?

Q Okay.

A I mean, like, even though you overstate your liabilities, that doesn't mean-- even, okay, from that-- you cannot just put down any figures you want on this statement.

Q But Mr. Carr --you heard him-- does not have an accounting or a tax background, does he?

JUDGE PAINTER: I don't think you have to explain the inadequacies, do you, Mr. Hecht? We're really stretching this hearing out too far.

MR. HECHT: I think it's important, Your Honor, to show that if there was an inadequacy in the form 1-FR that was originally filed, either they were de minimus, or they were detrimental to the company's minimum financial computation.

It's one thing if a company states that it has a net worth of $2 million, and in fact its net worth is only $1 million. It's another thing if they show--

JUDGE PAINTER: You have established this fact, that there were three areas. And I suppose they were not -- what? $8000 or so. You've made your point.

MR. HECHT: Okay, thank you, Your Honor.

Q (By Mr. Hecht) Now, during the course of your audit, do you recall having any discussions with Mr. Carr about what to do with respect to monies received from customers, but the company still held and had not purchased the option in London?

A I don't-- I don't-- I don't-- I don't think I had such a conversation with him.

Q Do you recall Mr. Carr telling you at any time during that two day period that he was not-- he was holding the monies aside, and that he was not purchasing these options until his registration application was accepted?

A He did not mention anything about money. He only stated that he-- he's not supposed to sell options because he's not registered.

Q And don't you recall him discussing with you, or did you participate in the conversation with yourself, Mr. Carr and Mr. McCarthy, to hold these funds in suspense until the application was formally processed and accepted?

A No.

Q You don't recall any such conversation ever?

A Between three parties, no.

Q How about between two parties?

A There's no such conversation between me with anybody.

Q Did you ever have such a conversation with me?

A Regarding the segregation funds? No.

Q Not regarding segregation. Regarding the fact that Lloyd Carr & Co. was not purchasing the options in London until its status was clarified?

A Okay, the only conversation I have is with Mr. Carr. I ask him, was there recently any order filled? And he says, No because they are not registered yet.

Q He just said that? Or did he explain to you what steps-- what the company intended to do and why it was doing it?

A No, he didn't say.

Q And did you ever discuss this with anyone in your particular department at the CFTC?

A Only discussion I have is when I came back on the Monday. And I show my-- what I found to those people-- to the enforcement division.

Q When did you make your arrangements to come back and speak to the enforcement division on the following Monday?

A I did not make any arrangements. I was at my desk. They came over. They wanted to see what I got.

Q And that was the first time that you became aware that enforcement was interested in Lloyd Carr?

A No. As I stated before, when Iwas up in Boston, Mr. McCarthy called me up to get the information from the period January 1-- January 10 on to the present.

Q And you never told Lloyd Carr & Co. -- isn't that correct? -- why you were obtaining that information?

A First of all, I don't know what's that for.

JUDGE PAINTER: First of all, wouldyou clarify? You said they came to your desk when you went back on a Monday. They-- someone from the division of enforcment?

THE WITNESS: Yes. It's Mr. Les Blau.

Q (By Mr. Hecht) And when you spoke to Mr. Blau, do you recall what day you spoke to him?

A The late morning of the 24th, Monday.

Q And do you recall advising Mr. Carr that, as far as the audit persons were concerned, Lloyd Carr & Co. was would pass muster for inspection? For registration? Isn't it a fact that you did?

A No. What I said is this. On the night of the 20th, we worked so late that day. I told him that, based on the records they furnished me, they meet the 50. However, those have to be approved by my supervisor.

JUDGE PAINTER: I want to point out, Mr. Hecht, that we spent a great deal of time on this witness. And I think the questions are getting quite repetative. We're sticking to an area that's perhaps not totally related to the issues in this case. If it continues in this vein, I will set a time limit for cross on the witness.

MR. HECHT: Your Honor, I have notasked her any questions on this.

Q (By Mr. Hecht) And do you recall specifically telling Mr. Carr to call the New York Regional Office on Monday morning, to find out the final acceptance, at 10:00?

A Not to that respect. But I did tell him to call our office on Monday.

Q Why?

A The reason is that I told him if the financial part is okay, is approved, and the registration part is also okay and there's nothing against him from our enforcement section, then he would be registered. But it will take a long time-- a couple of days before he receives an offical letter from us. So it's better for the firm-- just for his advantage to call us to confirm that so they can go on business.

Q And in fact do you recall Mr. Carr telling you that he and Mr. LeMieux had already been through FBI checks in connection with the CTA application?

A I can't-- I don't recall that.

Q And there was no problem with the FBI or the SEC?

A I don't recall.

Q Had you ever participated in a pre-registration audit of a commodity option dealer where they had to get prior clearance from the division of enforcement?

JUDGE PAINTER: Clearance for what, Mr. Hecht?

MR. HECHT: Clearance for registration.

Q (By Mr. Hecht) Isn't it a fact that Lloyd Carr is the first time you ever heard where they had to get prior clearance from the division of enforcement as a condition to registration?

A No. It's usually like this. I mean, you cannot-- I mean, our Commission cannot register any firm unless everything is by-passed (sic).

Q And everything here normally is the FBI checks and the audit checks and the application is accurate?

A It could be some other thing, too. That's not the standard part. I mean, it could be some other customer complaints which I do not know because I'm in financial part.

Q And prior to January 21, have you ever heard of any customer complaints with respect to Lloyd Carr?

A I don't know because I'm in financial part. I don't know anything about enforcement.

Q And the division of enforcement, if I recall your testimony, only became interested in this -- to your knowlege -- when Mr. Blau spoke to you on the 24th of January?

MR. LEVIE: That's a mischaracterization.

JUDGE PAINTER: I'm going to give you 15 more minutes with the witness, Mr. Hecht, so be sure to get the questions you think are pertinent down. I believe you've had ample time to cover the areas that were gone into on direct.

MR. HECHT: I'm just going over them one by one, Your Honor.

JUDGE PAINTER: Okay, take it till 3:00.

THE WITNESS: Okay, as I stated before, on January 20 I received a call from Mr. McCarthy. He told me to get that information for enforcement section. At that time, I do not know what is it for.

Q (By Mr. Hecht) Do you recall any discussion with Mr. Carr with respect to the retention by Lloyd Carr & Co. of a bookkeeper?

A He's-- he told me that they did not have any bookkeeper at that time. And he's going to hire one.

Q Did he explain to you what happened to the prior bookkeeper?

A No.

Q You don't recallhim explaining that the bookkeeper's mother had died?

A No.

Q Do you recall any requests subsequent to January 25, any requests from Lloyd Carr & Co. or its counsel for a list from you of exactly what records you think are required?

A Request for me?

Q To give a letter saying, these are the following books we think you should have?

A As of this morning, you asked me.

Q Are you willing to give Lloyd Carr & co. such a list?

MR. LEVIE: Objection, Your Honor.

JUDGE PAINTER: Sustained.

I think that's outside her scope of duties now.

MR. HECHT: I have no further questions, Your Honor.

JUDGE PAINTER: Thank you, Mr. Hecht.

Mr. Levie, I'm sure you'll accomplish this in less than five minutes, won't you Mr. Levie?

MR. LEVIE: I believe I will, Your Honor.

JUDGE PAINTER: Verywell.

REDIRECT EXAMINATION

Q (By Mr. Levie) When you prepared your report for Mr. McCarthy on February 2, 1977, did anyone from the division of enforcement tell you to add or delete anything that you intended to put in your report?

A No.

Q When you requested-- let me rephrase that.

The changes you requested from Lloyd Carr's depositories, did you ever make a request that the word '' company'' be changed to co. -- c-o?

A Can I check?

Can you rephrase your question?

MR. LEVIE: May I have a moment, Your Honor?

JUDGE PAINTER: Off the record.

(Discussion off the record.)

JUDGE PAINTER: Back on the record.

MR. LEVIE: No further questions, Your Honor.

MR. HECHT: I have one question.

RECROSS EXAMINATION

Q (By Mr. Hecht) With respect to the bank accounts that Mr. Levie just questioned you about, do you recall that Mr. Carr advised you that-- for all practical purposes -- they deemed Lloyd Carr Financial and Lloyd Carr & Co. as one company?

A He did not tell me. But I got information through a transponder which he sent it to our division.

Q And he never discussed this with you?

A Not when I was up there, or even subsequent because we've had no conversations.

Q When you came up there and asked for the books and records, he gave you books and records relating to both, didn't they?

A I wasn't aware of that at that time. He-- we ask him for all the records they have to support the original 1-FR that he gave.

Q And he gave you records of Lloyd Carr & Co., and Lloyd Carr Financial?

A Yes.

Q And did you ever ask him what the relationship was between the two companies?

A As I stated before, I wasn't aware at that time that the discrepancy in the name.

Q My question is, did you ever ask him since you saw records with said Lloyd Carr Financial Co. on them and some records which said Lloyd Carr & Co. on the top, did you ever ask him to explain it?

A As I stated, I wasn't aware that the discrepancy in the name before when I was there.

Q How did the Commission find out about it?

A I discovered that during the weekend when I got home.

MR. HECHT: Your Honor, it's going out of the scope a little of the redirect. But I ask the Court's indulgence.

Q (By Mr. Hecht) And when you got home on the weekend, what did you do then? Did you call someone in your division?

A No, because I don't have their telephone number.

Q So on Monday you called someone aboutthis? The 24th? And spoke to someone?

A On Monday I talked to Mr. McCarthy. And I show him all the discrepancies.

Q The discrepancies with respect to the bank deposits?

A And also the--

Q That's what we're talking about now is the bank. I just want to say that because that's what he asked on redirect.

A Yes.

Q And to your knowledge, did Mr. McCarthy get in touch with the company?

A To my knowledge, I believe Mr. McCarthy got first in touch with Mr. O'Brien.

Q And then, to your knowledge, did either of them get in touch with the company?

A Yes.

Q And what we're referring to is a result of that conversation or that set of facts, you sent out those confirmations to these depositories to find out if in fact the names had been changed on the accounts?

A Yes.

MR. HECHT: I have no further questions, Your Honor.

MR. LEVIE: Before she leaves the stand, I'd move into evidence Division Exhibits 23 and 24, which are two of the 1-FRs.

MR. HECHT: Your Honor, no objection.

JUDGE PAINTER: So admitted.

(Division Exhibit Nos. 23 & 24 were received in evidence.)

JUDGE PAINTER: Before we go off the record, I should state that prior to the noon break I had asked counsel to do their utmost to come to some sort of settlement. I think, Mr. Levie, you indicated that possibly we should make reference to this in the record.

My interest in the settlement would be if I were running this as I would any other case, I would be interested in a fair settlement between the parties to save the cost of litigation.

It is my understanding -- and correct me if I'm wrong -- I believe you did want this on the record, did you not, Mr. Levie?

MR. LEVIE: Yes, Your Honor.

JUDGE PAINTER: Did you, Mr.--

MR. HECHT: It makes no difference to me. It's just these kind of discussions are normally not part of the record. But if you want them, fine.

JUDGE PAINTER: I simply wanted to state for the record that I did urge that efforts be made to affect a settlement. And it's my understanding that that is simply out of the question from both points of view. The terms that Mr. Levie has in mind would not be at all acceptable to Mr. Hecht, and vice versa.

MR. HECHT: Well, I don't think that's fair, Your Honor. Vice versa -- we never got to the point where they would even consider a counter-offer. There's was, in effect, this is it and that's it.

JUDGE PAINTER: It's my understanding that it would be somewhat akin to a-- I guess a World War II total victory declaration.

MR. HECHT: That's what the division wants, yes.

JUDGE PAINTER: If I'm wrong in that analogy, you may correct me. But I simply want it stated for the record that I did ask you to attempt to settle.

MR. HECHT: Right.

And I think it's fair to state that Mr. Levie pointed out that this was the position of the divission of enforcement, and that's what he's been authorized to advise me.

JUDGE PAINTER: Yes.

Anything more you'd like to state?

MR. LEVIE: Does that terminate the question of settlement with respect to the Court?

JUDGE PAINTER: Oh, no. I will encourage it even later. But I don't see much point in it from now on.

MR. HECHT: Yes.

JUDGE PAINTER: I'm certainly not going to expect much. And I don't mean that to be critical. I simply think that's a fact of life.

I don't intend to do anything more, Mr. Levie.

MR. LEVIE: Thank you, Your Honor.

JUDGE PAINTER: Off the record.

(Discussion off the record.)

JUDGE PAINTER: Back on the record.

Next witness, counsel for the Division.

MS. MELTZER: I'd like to call Mr. Cooper to the stand.

JUDGE PAINTER: Would counsel identify herself for the record?

MS. MELTZER: Ellen Meltzer.

JUDGE PAINTER: Mr. Cooper, would you come forward?

Whereupon,

ALLEN J. COOPER

was called as a witness by and on behalf of the CFTC, and having first been duly sworn, was examined and testified as follows;

MS. MELTZER: I'd like to note for the record that we have turned over Jencks material to Mr. Hecht.

JUDGE PAINTER: So noted.

MR. HECHT: I haven't had a chance to fully review the material, but I'm sure I will be given an opportunity before I cross examine.

JUDGE PAINTER: Yes, Mr. Hecht.

DIRECT EXAMINATION

Q (By Ms. Meltzer) Mr. Cooper, would you please state your full name for the record?

A Allen J. Cooper.

Q Where are you employed?

A I am employed with the Commodity Futures Trading Commision's Eastern Regional Office.

Q Were you formerly employed by the CFTC's predecessor agency, the Commodity Exchange Authority?

A Yes, I was.

Q How ong were you employed by the two agencies?

A Since November of 1969.

Q What is your present position with the Commission?

A My present duties are that I am in charge of the processing of applications for registration of commodity trading advisors and commodity pool operators for the entire nation. I am also in charge of the registration of futures commission merchants and floor brokers for the Eastern Region.

Q In connection with these duties, do you see all applications for registration as an FCM, which are submitted to the New York Regional Office?

A Yes.

Q Which documents comprise an application for registration as a futures commission merchant?

A Form 1-R, Application for Registration as Futures Commission Merchant; Form 1-FR, Statement of Financial Condition; and Form 94, Biographical Information Form.

Q Is it necessary for all of these documents to be submitted to the Registration departmentbefore a firm may be registered as an FCM?

A Yes.

Q What is the procedure employed by the New York Regional Office upon receipt of an FCM application?

A Upon receipt of an FCM application, the mail room will time-stamp the application. It's forwarded to the administrative unit where the fees are processed. Mrs. Eileen Waldron, who works in the administrative unit, will record the fee on a schedule of collection. She will give--she will record the check on the application using the Commission's own fee number or check number, and the same number is placed on the back of the check itself. Mrs. Waldron then will deposit the total days fees in the Federal Reserve Bank of New York. The applications are then forwarded to the Office of Qualifications and Registration.

Q And that is your office?

A Yes.

Q If all the forms which you've mentioned, the 1-R, the Form 94 and the 1-FR, are submitted to the New York Regional Office, what does your registration department then do with the application?

A The application is processed. My staff will examine the application. The first thing that they would do was take the form 1-FR, the financial statement, to Mr. James

J. McCarthy or Mr. Barnett B. Gelber, who reviews these forms for Mr. McCarthy. Then the staff will process the application by seeing that the application itself is not deficient, the biographical information forms are not deficient.

Q If all the necessary forms have not been submitted by an applicant, what is the--what does the registration department do with the application?

A My staff will prepare what we call a deficiancy letter, which is a form letter, and the items that are deficient are included on that form letter. It's typed, the application itself is attached to that form letter. It's mailed back to the applicant, and no processing will commence until the completed application is returned.

Q If an applicant has failed to submit a 1-FR statement of financial condition, is the application returned to the applicant along with the deficiency letter?

A Yes.

Q Besides the deficiency letter, is there usually any other communication between the registration department and the applicant?

A My staff will normally call the applicant at his office and tell him why the application was being returned, and that it's being returned with the deficiency letter.

Q Does the registration department do this in all cases where a form 1-FR has not been submitted along with the 1-R?

A Definitely.

Q Mr. Cooper, do you recall an application in the name of Lloyd, Carr Financial Co. having been submitted to the New York Regional Office at the beginning of October?

A Yes.

Q Mr. Levie has just handed you Division Exhibit 9(a) and I'd like you to take a look at that?

A This is a photocopy of the application for registration as futures commission merchant, Form 1-R, submitted by Lloyd, Carr Financial Co..

Q When was that application received by the New York Regional Office?

A It was initially received in the Commission's New York Regional Office on October 1, 1976.

Q Did the Commission receive any other forms from Lloyd, Carr Financial Co. along with that application?

A No.

Q Was that application accompanied by a form 1-FR, Statement of Financial Conditions?

A No.

Q When the registration department received that application from Lloyd, Carr Financial Co., what did the registration department do with it?

A The Office of Qualifications and Registration, in particular, Mr. Eugene Loehr, handled this application. He reviewed it. He found that it was deficient, the form 1-FR was missing and certain biographical information was missing from the applcation itself on Mr. LeMieux and Mr. Carr. In addition, the application--the date the application was signed was not included in the certification section.

Q Was a deficiency letter prepared and sent to the applicant?

A It was prepared by Mr. Eugene Loehr and sent to the applicant. It was accompanied by the application itself.

MR. HECHT: Your Honor, can I see what deficiency letter they are referring to?

MR. LEVIE: What has previously been marked, Your Honor, as Division Exhibit 10 for identification. It was also included in the documents in evidence as Division Exhibit 26.

JUDGE PAINTER: AS I understand it, you have not yet offered Exhibit 10 into evidence?

MR. LEVIE: That's correct.

MR. HECHT: Is this Division's Exhibit 10 or Respondent's Exhibit 10?

MS. MELTZER: Division Exhibit 10.

JUDGE PAINTER: Thank you.

Q (By Ms. Meltzer) Mr. Cooper, you were just handed what has been marked for identification as Division Exhibit 10. I'd like you to take a look at it. Have you seen that letter before?

A Yes. This is the deficiency letter that Mr. Loehr sent out. There is certain writing on it--at the top of this application form, which I have not seen before.

Q Aside from the writing above the Commission seal, is that an accurate copy of a letter which was sent to Lloyd, Carr Financial Co.?

MR. HECHT: Objection to the form of the question. He already testified that he didn't send out the letter. The only person who can testify to that, if it was sent out, is a Mr. Loehr.

JUDGE PAINTER: I'd like to know whether this witness is aware that this is a normal letter that goes out in case an application is deficient, Mr. Hecht.

MR. HECHT: I think he already testified as to that, Your Honor. I think her question was, was this letter sent out?

JUDGE PAINTER: Mr. Levie?

MR. LEVIE: I beg the Court's indulgence, Your Honor, while I confer with my colleague.

JUDGE PAINTER: Yes.

If I may ask the witness, was a similar letter, to your knowledge, sent out to Lloyd, Carr, the applicant?

THE WITNESS: Yes.

Q (By Ms. Meltzer) Did your department take any other steps in connection with the Lloyd, Carr Financial Co.'s deficient application besides return the application and sending Lloyd, Carr Financial Co. a deficiency letter?

A Mr. Loeher told me that he contacted Mr. Carr by telephone--

MR. HECHT: Your Honor, I object and move that it be stricken. It's purely heresay.

JUDGE PAINTER: It's heresay, which is not unknown in an administrative proceeding. I hate to say that all the time, but we may have to have Mr. Loehr here if things get sticky.

MR. HECHT: I think I should, as an attorney, note for the record, my objection.

JUDGE PAINTER: oh, yes, if it behooves you to do so. I think the rule is that you can't base any finding on heresay testimony of this type, but answer the question to the best of your ability. Or have you already answered it, Mr. Cooper?

THE WITNESS: I think I've already answered it.

MR. HECHT: Do you not deny my motion for striking, I guess, Your Honor?

JUDGE PAINTER: It is denied.

MR. HECHT: Okay, note my exception for the record.

Q (By Ms. Meltzer) Did Mr. Loehr speak with Mr. James Carr?

A Yes.

MR. HECHT: Note my objection for the record. This is clearly heresay.

JUDGE PAINTER: I would like to know how you came by that knowledge?

THE WITNESS: Mr. Loehr told me he spoke to Mr. Carr about the deficiency--about the deficient application.

Q (By Ms. Meltzer) To the best of your knowledge, on approximately what date did Mr. Loehr speak with Mr. Carr?

A To the best of my knowledge, it was on or about the date that the deficiency letter was mailed out, October 12th. It may have been a day or two after that.

Q What was the nature of Mr. Loehr's conversation with Mr. Carr?

A Mr. Loehr told Mr. Carr that the application was returned and the reasons that it was returned, that there was no financial statement and there was certain biographical information missing.

JUDGE PAINTER: I assume Mr. Hecht is not going to object, but would you tell me how you know what you just said?

THE WITNESS: Mr. Loehr told me.

MR. HECHT: Your Honor, just let me note that I've got a continuing objection to the whole line. I've stated it, and you've made your ruling and noted my exceptions--

JUDGE PAINTER: Well, I think it is proper to have him testify conerning a conversation between himself with Mr. Loehr. That's admissible, even under your most strict rules of evidence.

MR. HECHT: That's true. But what he said to Mr. Carr would be heresay. I'm not denying that maybe Mr. Cooper spoke to Mr. Loehr. I'm sure they have a desk right next to each other.

JUDGE PAINTER: Continue, Ms. Meltzer.

Q (By Ms. Meltzer) Did Mr. Loehr tell you that he mentioned to Mr. Carr that a deficiency letter was being sent back along with the application?

A Yes.

Q Did Mr. Carr indicate to Mr. Loehr that he would resubmit the application--the FCM application--to the Commission?

A I don't know.

Q Did Lloyd, Carr Financial Co. resubmit their application to the Commission during October or November?

A No.

Q Did they resubmit their application during December?

Q To your knowledge, were any of Mr. Loehr's calls returned by Mr. Carr?

A No. Not to my knowledge.

Q Did anyone from the Qualifications and Registration Department later speak to Mr. Carr?

A Sometime in November, Mr. Loehr got through to Mr. Carr. And I spoke with Mr. Carr myself.

Q What did you tell Mr. Carr?

A I told Mr. Carr that we still did not receive his completed application with the 1-FR and that I wanted to know whether he was sending it back or not, because we were not processing anything.

Q What did Mr. Carr tell you?

A Mr. Carr told me that he would let me know in about a week.

Q Just to clarify that, Mr. Carr answered that he would let you know in about a week if he would resubmit his application, his FCM?

A Yes.

Q Did Mr. Carr mention to you that he had not received a deficiency letter from the Commission?

A He did not mention that to me.

Q Did Mr. Carr call you the following week?

A No.

Q Mr. Cooper, you mentioned that during your conversation with James Carr you told him that he had not submitted a 1-FR to the Commission. Did you state the other deficiencies in his application which your registration department had noticed?

A Yes. I explained to him what was deficient on his application.

Q What did you tell him?

A I told him that his application was missing the 1-FR statement of financial condition and I also told him about the biographical information and the date that was missing on the application itself.

Q Mr. Cooper, you stated that Mr. Carr did not call you back the following week. Did anyone from Lloyd, Carr Financial Co. contact you the following week?

A No.

Q When the registration department had not heard from Mr. Carr after approximately a week, to your knowledge, did anyone in the registration department attempt to contact Lloyd, Carr Financial Co. again?

A Yes. Mr. Loehr attempted to contact Mr. Carr again.

Q On approximately what date?

A He attempted to contact him several times. I could not tell you the dates.

Q How do -ou know that he attempted to contact him?

A When there's a problem with an applicant, my staff conversation?

A Yes. I told him that I knew Mr. Hecht and that he could call me direct.

Q Did Mr. Hecht thereafter contact you?

A On or about the afternoon of December 22nd, Mr. Hecht contacted me.

Q During that conversation with Mr. Hecht, did you discuss the Lloyd, Carr Financial Co. application?

A Yes.

Q What did you tell Mr. Hecht?

A I told Mr. Hecht that I still had not received the completed application from Lloyd, Carr Financial Co. and I had not received a financial statement.

Q What was Mr. Hecht's response?

A Mr. Hecht indicated that we would be receiving it.

Q Did the Commission later receive an FCM application from Lloyd, Carr Financial Co.?

A Yes.

Q When did we received the application?

A January 17, 1977.

Q Was this application accompanied by a form 1-FR, statement of financial condition?

A Yes.

Q What did you do with that form 1-FR when you received it?

comes to me for advice--what to do. In this case, Mr. Loehr asked me what should I do, and I told him, "Keep calling."

Q To your knowledge, did Mr. Loehr leave messages at the Lloyd, Carr Financial Co. office for James Carr?

A Yes. Mr. Loehr told me that he left messages.

Q Did James Carr ever return Mr. Loehr's call, to your knoweldge?

A Not to my knowledge.

Q Did Mr. Loehr eventually reach Mr. Carr during the month of December?

A Yes. On or about the middle of December, Mr. Loehr got through to Mr. Carr.

Q To your knowledge, what did he say to Mr. Carr?

A I don't know what he said to Mr. Carr, but he switched the call into me.

Q What did you tell James Carr?

A I told James Carr----Commission's Eastern Regional Office has still not received the completed application and the financial statement.

Q What was Mr. Carr's response?

A He was going to speak to his attorney.

Q Did he mention who his attorney was?

A Yes. Mr. Hecht.

Q Did you say anything else to Mr. Carr during that

A My staff immediately forwarded the 1-FR to Mr. McCarthy and, or, Mr. Gelber, who reviews the 1-FR's.

Q Did the Commission later receive any other FCM applications from Lloyd, Carr Financial Co.?

A No.

Q Did the Commission later receive any FCM application from Lloyd, Carr and Co.?

A Yes.

Q Mr. Cooper, I am handing you what has been marked as Division Exhibit 27 for identification, and I'd like you to examine it?

(The document above-referred to was marked Division Exhibit 27 for identification.)

A Yes.

MR. HECHT: For the record, Your Honor, I'd like counsel to identify what the document is the witness is looking at.

JUDGE PAINTER: You've been provided with a copy, have you, Mr. Hecht?

MR. HECHT: No, this is what I thought was Exhibit 9. I don't know the difference.

JUDGE PAINTER: Ms. Melzer, can you identify the document then?

MR. LEVIE: If I might, Your Honor, Division Exhibit 9(a), to which Mr. Cooper referred to previously, is the

FCM application submitted by Lloyd, Carr Financial Co.. Division Exhibit 27, to which Mr. Cooper was about to refer, is the FCM application submitted by Lloyd, Carr and Co. and was received by the Commission on January 25th.

JUDGE PAINTER: I think that's clear, Mr. Hecht.

MR. HECHT: Okay. I thought this was part of their exhibits already.

Q (By Ms. Meltzer) Mr. Cooper, what--can you identify Division Exhibit 27?

A This is the form 1-R, submittted by Lloyd, Carr and Co., a new applicant.

Q On what date was that application received by the Commission?

A It was received in the Commission's Eastern Regional Office on January 25, 1977.

Q Is Division Exhibit 27 an accurate Xerox copy of the FCM application of Lloyd, Carr and Co. which was received by our offices--by the Commission's offices--on January 25th?

A Yes.

MR. HECHT: Your Honor, I have no objection. I think that's been admitted into evidence as part of Exhibit 26, in particular, pages 26(t), (u) and (v). So it's already been admitted into evidence, and I have no objection.

JUDGE PAINTER: If you have no objection, then we'll have a little duplication on the records. It's admitted.

(The document previously marked Division Exhibit 27 for identification was received in evidence.)

Q (By Ms. Meltzer) Mr. Cooper, from October 12, 1976, until January 17, 1977, did Mr. James Carr ever call you concerning his application for registration as a futures commission merchant?

A No.

Q To your knowledge, from October 12, 1976, until January 17, 1977, did Mr. James Carr ever contact anyone in the Qualifications and Registration Department concerning his FCM application?

A Not to my knowledge.

Q From October 12, 1976, until January 17, 1977, did Mr. Charles LeMieux III ever call you concerning his FCM application?

A No.

Q To your knowledge, did Charles LeMieux ever contact anyone else in the registration department concerning the Lloyd, Carr FCM application?

A Not to my knowledge.

MS. MELTZER: I have no further questions.

JUDGE PAINTER: Thank you.

Any cross?

MR. HECHT: Oh, yes, Your Honor.

CROSS EXAMINATION

Q (By Mr. Hecht) You testified that you also process the CTA applications for the entire country?

A That is correct.

Q Isn't it a fact that the fitness criteria for the principals of the CTA and the fitness criteria for the fitness of principals of an FCM are identical?

A That is correct.

Q In fact, on November 19, 1976, the CTA application of Lloyd, Carr Financial was approved by you?

A It was approved. The effective date was November 20th.

Q Thus, the CFTC had already performed the necessary FBI and related checks on both Mr. LeMieux and Mr. Carr, who were listed as the principals of Lloyd, Carr Financial as of that date?

A To answer your question, on that date it's not necessarily so, because we are required by Section 4N2 of the Commodity Futures Trading Commission Act of 1974 to declare a registration effective within 30 days after receipt of the completed application. So that the fitness checks may not have been completed and probably were not completed on November 19th.

Q Then how come they were approved as a commodity trading advisor during--on that day or the day after?

A Pursuant to Section 4N2 of the Commodity Futures Trading Commission Act of 1974.

Q As a CTA?

A In other words, the completed application, the CTA application, the completed application was received on October 21, 1976.

Q Isn't it a fact that they filed their application long before and there was a dispute as to whether a Social Security number was required with respect to Mr. Carr? Do you recall that discussion with him?

A The trading advisor application was handled by someone else on my staff and there were several items missing. Several significant items. Are you talking about the FCM now?

Q No, the CTA?

A Okay, fine.

Q In fact, didn't the CFTC run its FBI and SEC check on Mr. LeMieux and Mr. Carr?

A The CFTC initiated the fitness checks, after we received the completed application, on October 21.

Q In fact, that disclosed nothing adverse with respect to Mr. Carr or Mr. LeMieux?

A That is correct.

Q Accordingly, at that time, if you'd run the same check through on the FCM application with respect to those persons, you would have come up with the same result, wouldn't you?

A Are we talking about the date that we approved the trading advisor?

Q Yes?

A I would say again that the fitness checks were probably not in on that date.

Q But you don't know?

A I don't know. Right.

Q But if it wasn't on that date exactly, subsequently, the fitness check was completed with respect to Mr. LeMieux and Mr. Carr?

A That is correct.

Q And that fitness check showed nothing adverse?

A Correct.

Q And that is one of the functions of your particular department to initiate the fitness check to see what it discloses?

A That is correct.

Q That's separate and apart from what the Division of Enforcement does and what the Division of Audit does?

A It's separate from the Division of Enforcement, unless we turn up some derogatory information.

Q And then you forward it to the Division of Enforcement?

A Then the registration staff in Washington would work together with the Division of Enforcement.

Q With respect to--so for all practical purposes, whether a person files an FCM application or a CTA application, if they pass muster on this check for one, they would pass muster for the other?

MR. LEVIE: With respect to the individuals--?

MR. HECHT: To the individuals, yes.

THE WITNESS: On the fitness check, yes, that is correct.

Q (By Mr. Hecht) I show you now a copy of Exhibit 26(j). Is that identical to Division Exhibit 10?

A Yes.

Q If you notice in the upper right-hand corner, there's a hand-written note, "Said never got the letter." Do you know who wrote that note?

A Prior to the--prior to this afternoon, I never saw that writing on a photocopy of the deficiency letter, which is kept in my Office of Qualifications and Registration.

Q So this is a copy of something that's in your Division's files, is that correct?

A This is a copy of something that's in my Division's files, but my office does not have that writing.

Q Does anyone know how this writing got on there?

Do you have any idea of who in the Commission put this writing on there?

A No, I don't.

MR. HECHT: Your Honor, at this time, if you want I will go through the formal subpoena mechanism or not. I think we should bring up Mr. Loehr, since he's apparently the gentleman who directly handled this application.

JUDGE PAINTER: Is Mr. Loehr officed in New York?

MR. HECHT: Yes, he is.

THE WITNESS: Yes.

JUDGE PAINTER: We may be in New York next week, Mr. Hecht.

MR. HECHT: Okay.

Q (By Mr. Hecht) On this letter here, where it's your signature, did you personally sign this letter or is there a stamp to be used for this letter?

A This is a form letter. I sign the original and then it is photocopied by my staff.

Q Do you know where the original letter is and if, in fact, you signed that on October 12th?

A I signed the form letter, but not on October 12th.

Q When did you sign the form letter?

A Many months before that.

Q So you had no personal knowledge that this letter was ever sent out?

A That's not correct.

Q Did you personally sign this letter, or did you personally put it in the mailbox or give it to a secretary to put in the mailbox?

A Mr. Loehr gave the letter to me and I gave it to my clerk typist to type.

Q Do you remember in this box, "other", that's checked off you have in here, "State in which incorporated?"

A That is correct.

Q Isn't it a fact that Lloyd, Carr Financial Co.'s application shows that it was a partnership? The original--

A Well,--

Q The original one, back in October?

A That is correct.

Q With respect to the address, date of birth, place of birth of Mr. LeMieux, isn't it a fact that that is disclosed on page 3 of the CTA application of Lloyd, Carr Financial, as "391 Marlboro Street, Boston, Mass.", as well as the Social Security number?

A That is correct. Can I say something else?

Q Well, let him handle it on redirect. In addition, here is Exhibit 26(n) and that shows the name, address and Social Security number of James Carr, as of September 29, 1976--

MR. LEVIE: Your Honor, is it Mr. Hecht's position with this line of questioning that once someone has applied to the Commission in one capacity that they are therefore free to send in incomplete applications in the future, merely because there was some other application filed sometime in the future? Again, I question the relevancy of this kind of questioning.

JUDGE PAINTER: It could be. Now, Mr. Hecht is aware that this is the last witness of the day, and I'm willing to hear the answer, if the witness knows.

THE WITNESS: As I stated before, the completed trading advisor application was not received until October 21, and that would be when this biographical came back.

Q (By Mr. Hecht) Well, the Division of Enforcement has filed this as an exhibit as an attachment to the commodity trading advisor application?

A That is correct.

Q And what is the date on those forms?

A This form from Mr. Janes A. Carr is dated September 29, 1976.

Q Isn't that the exact date that they filed--that this date on their original FCM application?

A The original FCM application was received on October 1 without biographical information forms.

Q I think you'll find, if we get out the original application form of Lloyd, Carr--and I believe that's

Respondent's Exhibit 9--

MR. LEVIE: Is this about to be a question, Your Honor?

MR. HECHT: Let me get that out--

JUDGE PAINTER: The question is, whether or not the Respondent filed a biographical sketch with the FCM application, Mr. Hecht?

MR. HECHT: If I can get out the FCM application--what number is that? I believe it's Respondent's 9--

MR. LEVIE: It's Division Exhibit 9(a)--

JUDGE PAINTER: Division Exhibit 9(a) is the application for registration.

MR. HECHT: The original one?

JUDGE PAINTER: It's a copy of the original.

Off the record.

(Discussion off the record.)

JUDGE PAINTER: Back on the record.

MR. HECHT: Therefore, there is a time-stamp on Exhibit 9(a) of October 1, 1 o'clock p.m.?

THE WITNESS: Yes, that's correct.

Q (By Mr. Hecht) And accordingly, there--it had to be sent from Boston sometime prior to October 1?

A It could have been hand-delivered.

Q But someone who would have signed it would have had to have physically signed it either on October 1 or before, am I right?

A That is correct.

Q In fact, do you recall that all of the other data submitted with that application originally had on there the date, 9/29/76, as to Jim Carr, and 8/25, as to Charles LeMieux?

A I just told you that the biographicals were not submitted with that application.

Q How do you know? You had two applications at the time, didn't you, one as an FCM and one as a CTA?

A Correct.

Q And there's no way of knowing whether that particular biographical data came with the FCM application or the CTA application, is there?

A Yes, there is a way of knowing.

Q How?

A The commodity trading advisor application was time-stamped when it was received. It was also received prior to the FCM application.

Q But you have something there from Mr. Carr dated September 29, 1976, am I right?

A You are right.

Q And they did not file a CTA application on or about October 1?

A You are wrong.

Q When did they file the CTA application?

A They filed it the first time in early September. They filed it the second time on October 1, because they never filed the biographical for Mr. Carr in the first place. That was one of the deficiencies.

Q You mean, they filed their applications together, their CTA and their FCM applications together?

A No. Initially, they filed a commodity trading advisor application in Septemebr. There was no FCM application received by the Commission until October 1st.

Q But the biographical data with respect to Mr. Carr is dated September 29th?

A That's because Mr. Carr failed to submit any biographical information form to the Commission and that's the reason why the application to trading advisor went back the first time.

Q Isn't that the identical biographical form that you used both for FCM applications and CTA application?

A Yes, that is correct.

Q So there's no way of telling on that form which particular filing that--those--documents refer to?

A Yes, there is a way of telling.

Q Right from the face of those forms?

A Well, I can tell from the face of the forms.

Q How?

A Because my staff has coded it 80576. A five-digit number starting with 8 represents commodity trading advisor. A five-digit number starting with 5 represents a futures commission merchant. You can check that with the Commission.

Q How do you make the determination that a particular biographical data sheet goes with one application or another application before you code it?

A The trading advisor biographicals were attached to the trading advisor application.

Q Is it a fair statement to state that after--that as of October 1, 1976, in the Commission's files were the appropriate biographical data with respect to Mr. LeMieux and Mr. Carr, irrespective of which application you put it with?

A There were biographical information forms; however, there were some items missing on these biographical information forms and they were returned to the applicant and were not received again until October 21.

Q You mean, those forms were not received by you until October 21?

A Thatis correct.

MR. LEVIE: For the record, You Honor, when Mr. Hecht and Mr. Cooper are referring to 'those' documents, they should be referring to either CTA or FCM; otherwise, the record is going to be very confused.

JUDGE PAINTER: As I understand this witness, there was a biographical sketch that came in with the CTA the first time; it was sent back; it came back in again with the CTA application in October; and none came in on the FCM application.

MR. HECHT: But the point I'm trying to establish, Your Honor, if you want a proffer of proof is that the Commission had this information checked off in the other box in its possession on a certain date.

JUDGE PAITNER: In a CTA filing, as opposed to an FCM filing.

MR. HECHT: Okay, right.

Q (By Mr. Hecht) So it's clear to you that neither Mr. Carr nor Mr. LeMieux were trying to avoid this kind of disclosure on that date to the Commission?

MR. LEVIE: Objection as to what their intention or the frame of mind of Carr and LeMieux were.

JUDGE PAINTER: Sustained.

Q (By Mr. Hecht) Isn't it a fact that as of a certain time in December this information had been furnished to the CFTC?

MR. LEVIE: Which information?

Q (By Mr. Hecht) The biographical data information, whether it was annexed to a CTA form or an FCM form, it was in the Commission's possession?

A It was returned oover to the Commssion with the CTA application on October 21, 1976.

Q So on October 21, 1976, theCommission knew the address, date of birth, place of birth and Social Security number of Mr. LeMieux and Mr. Carr?

A That is not completely correct.

Q In what way?

A Mr. Carr, to my knowledge, never submitted his Social Security number and we accepted the biographical.

Q What is the number 00001076?

A That's a fictitious number in order to code him into our computer system.

Q Isn't it a fact that Mr. Carr pointed out to the staff that there was no requirement for an individual to furnish their Social Security number and you had a number of discussion on that?

A Not to my knowledge..

Q Is it normal for someone to refuse their Social Security number?

A It's not normal, but it does happen.

Q Were you aware of any discussion between members of your staff and Mr. Carr with respect to furnishing a Social Security number?

A I'm aware that all of the items on the deficiency letter were brought to Mr. Carr's attention, which would include the Social Security number which we use to expedite processing of the application.

Q And you have no idea who wrote on here, "Never got the letter?"

MS. MELTZER: Would you please identify what document you are referring to?

MR. HECHT: 26(j); this is the October 12 document.

THE WITNESS: I don't know who wrote it, but I could tell you that it was not myself or Mr. Loehr, because it's not his handwriting.

Q (By Mr. Hecht) Do you know whose handwriting that is?

A I don't know.

Q When you get back to New York tonight, would you take a photostat of this and attempt to find out whose writing it is?

A Yes, I will.

Q And so advise the Court without coming back, so advise Mr. Levie or me?

A Yes. I should be able to find out who it is.

Q Is it the policy of your Division to send out form letters which are pre-signed months before?

A The form letter itself is pre--is signed once and then we might make a few hundred photocopies. I have four people under me who would be using those form letters. And they would go out after they're typed.

Q Isn't it a fact that with its initial FCM application, Lloyd, Carr Financial furnished a check in the amount of $200.00, which was cashed by the CFTC?

A That is correct. Mrs. Waldron deposited that check in the Federal Reserve Bank of New York.

Q And at no time was that check ever returned to Lloyd, Carr, except as a cancelled check?

A That is correct.

Q You testified before that it's the policy that there is normally a telephone call from a member of your staff or by yourself when a letter of this type is sent out?

A No, it's the policy that my staff will call the applicant, unless there's a problem; then theyshift the call to me.

Q You testified that Mr. Loehr called Mr. Carr?

A Yes. Mr. Loehr told me that he called Mr. Carr and explained why the deficiency letter was sent and what was on the deficiency letter.

Q Do you recall Mr. Carr stating to Mr. Loehr, "But I already gave you that information in my biographical data sketch?"

A I'm not aware of such a statement.

Q To your knowledge, at any time, did the Commission offer to refund Lloyd, Carr's check of $200.00?

A We only refund a check when an applicant requests withdrawal of the application.

Q How are you able to ascertain whether or not Mr. Loehr sent out this letter?

A One, Mr. Loehr told me it was sent out; and two, I get to see the deficiency letters before they leave the office.

Q Isn't it a fact that Mr. Loehr told you that this was sent out sometime after January 10 of 1977?

A That's not correct. It was sent out on October 12 of 1976.

Q No--isn't it a fact that Mr. Loehr told you he sent out this letter after January 10th?

A No. He told me in October, when he was having a problem getting the completed application back and a form 1-FR. That is standard procedure for my staff to come to me with problem applicants.

Q Okay, you testified before that in the end of November that you had difficulty getting in touch with Jim Carr, do you recall that?

A I testified that Mr.LOehr was not able to get through to Mr. Carr

Q And that was in the end of November?

A That was in November, yes.

Q Isn't it a fact that you testified before that I was the counsel t[illegible] Lloyd, Ca[illegible]nd Co.?

A Yes. When I spoke to Mr. Carr, he said he would contact his attorney, and I said to him, "Do you mean Mr. Hecht?", and he said, "Yes." I said, "I know Mr. Hecht, you can have him contact me directly."

Q Right--

A And that was in December, mid-December.

Q But you knew that in November you were aware that there was an administrative proceeding going on in the New York [illegible]ional Office, in the office right next to yours, right?

MR. LEVIE: Involving what case, Your Honor?

MR. HECHT: British American Commodity Options.

MR. LEVIE: Then it's irrelevant.

MR. HECHT: No, I think it's relevant. Let me just tie it in.

JUDGE PAINTER: Were you aware, Mr. Cooper?

THE WITNESS: Yes, I was.

Q (By Mr. Hecht) And you saw me every day during that period--work day?

A I aaw you several days.

Q And you knew I was there every day?

A I assume you were in the hearing every day, yes.

Q And you were aware that there was litigation at that time whereby Lloyd, Carr and Co. and British American were questioning the regulations?

MR. LEVIE: Wait a minute, Your Honor. With all due respect, I think we're skipping around here, mixing apples with aranges. Mr. Hecht is presenting him with one set of facts, British American administrative; then suddenly he switched to other litigation--

JUDGE PAINTER: I'm inclined to agree, unless you are trying to establish some reason for your not getting to Mr. Cooper--

MR. HECHT: Let me ask it this way, Your Honor. I can tie it in, but I have to tie it in as a lawyer. Let me have about three more questions.

Q (By Mr. Hecht) During that period of time, you were aware of this litigation?

MR. LEVIE: Objection. What litigation, Your Honor, otherwise the record is going to be confused?

MR. HECHT: The regs litigation--

JUDGE PAINTER: He was talking about the British American litigation over the regulations, is that correct, Mr. Hecht?

MR. HECHT: Right, and Lloyd, Carr was the other party.

THE WITNESS: I was more familiar with the other British American litigation with the question of the commodity trading advisor. I wasn't really--I did not get involved in the other litigation that you are talking about.

Q Well, don't you recall we had a discussion that one of the things British American and Lloyd, Carr was questioning was the registration provisions, from a theoretical point of view? After the papers were filed?

A Which discussion and what date are we talking about?

Q During the last two weeks in November, do you recall any discussion with me with respect to the registration provisions of the regulation litigation, in general?

A Are you talking about the FCM legislation provisions?

Q Right, and the new regs resulting from the Knapp decision?

A The only thing I recall is on December 22nd, you asked me how I liked Judge Knapp's decision. Prior to that, I don't recall talking to you about that litigation. I was not involved in it and I had nothing to do with it.

Q With respect to that, were you aware that that decision came down on the evening of December 21?

A That is correct.

Q And that prior thereto, you had had a discussion with me as counsel that we were awaiting a ruling by Judge Knapp with respect to the constitutionality and the legaility of the registration provisions?

A Could you tell me when, sir, such a discussion was supposed to have taken place?

Q I'd say, in the beginning of December, because you had ashed me and contacted me about what the status was of Lloyd, Carr?

A No, that's not correct. You contacted me on December 22nd, not at the beginning of December.

Q And you don't recall any phone calls from me or Mr. Carr with respect to the status of the FCM application of Lloyd, Carr, pending the Court's ruling?

A There were no such phone calls from you or Mr. Carr to me.

Q Do you recall that during our phone conversation of December 22, that I discussed the Knapp decision on this and said that at this stage it would be appropriate for Lloyd, Carr to file?

A The only thing that I remember you asking me was how I like it, and I laughed and told you that Lloyd, Carr Financial Co. still has not filed a completed application and the form 1-FR. And you indicated that we would be receiving it, if those were your words--I don't know the exact words.

Q In fact, didn't we discuss that I felt it was appropriate that because of the minimum financial rules and the computations, that they should call in an accounting firm that was experienced in auditing brokerage firms so that the appropriate financial information could be furnished to the Commission?

A You mentioned to me that you were considering a CPA firm, but not for Lloyd, Carr. For British American Commodity Options Corp..

Q Doesn't British American have Dave Wineliss (phonetic) of Kat Zuckerman (phonetic), a very well known firm in this area, and they've had them all along?

A I'm not aware of that.

JUDGE PAINTER: How much more time, Mr. Hecht?

MR. HECHT: Not that much more, Your Honor. Not that much longer.

Q (By Mr. Hecht) Isn't it a fact that other than this letter of October 12 that your Division never furnished any written deficiency letter to either Lloyd, Carr Financial or Lloyd, Carr and Co.?

A I nver heard of Lloyd, Carr and Co. until January 25th, when the new application came in.

Q Did you discuss with anyone why the new application came in?

A Yes, I did.

Q Was that Mr. McCarthy?

A No, that was Mr. Robert E. Shiner, Assistant Director, Office of Qualifications and Registration. In Washington.

Q Did he discuss with you that the reason it was being filed this way was because it was at the request of the Staff?

MR. LEVIE: Is Mr. Hecht now foregoing all his heresay objections, since he's now seeking to elicit heresay?

MR. HECHT: I said, "Did you discuss with Mr. Shiner?" That's not heresay.

JUDGE PAINTER: Well, if its basis is the conversation he had with Mr. Shiner, I'm sure that he can testify to that.

THE WITNESS: Prior to January 25th, Mr. Shiner told me that he had been contacted by Mr. Carr and on January 25th, when I received a new application, with the new name, and one additional person was listed on this new application, I believe it's the branch office manager, I immediately called Mr. Shiner and told him that I had this new application, since I knew he had had a conversation with Mr. Carr.

Q (By Mr. Hecht) YOu recall--but, in fact, other than this letter here, there's no written communication between your office and Lloyd, Carr and Co. with respect to any deficiencies in their application?

A Which letter?

Q Division Exhibit 10 and 26(j)?

A It's the policy to call them on the telephone and that's what we did. We did not send another deficiency letter.

Q And, in fact, you--do you recall a discussion with respect to the need for updated financial information with me on December 22nd?

A I am not involved with financial requirements, so that I would not discuss that with you. You would have to discuss that with Mr. McCarthy, who is the branch chief of the Office of Audit and Financial Review. My staff would merely accept the form 1-FR, statement of financial condition, and submit it to Mr. McCarthy and any questions you have on that, you'd have to deal with Mr. McCarthy and his staff.

Q Well, that's the procedure, but do you recall discussing that with me?

A I did not discuss that with you.

Q Now, with respect to Mr. Shiner, did you discuss the circumstances surrounding the filing of the application other than the Greenwich Office branch manager biographical data information?

A I told Mr. Mr. Shiner that we had a new application received on January 25 under the name Lloyd, Carr and Co. and there was a new individual included on this application; and I sent Mr. Shiner a photocopy of this application.

Q Did you think that was a completely new application or that related to Lloyd, Carr Financial?

A That was a new application--a new applicant, a name which did not appear on the initial trading advisor or the initial FCM application.

Q Did you ever ask anyone or discuss with anyone the similarity between the two names?

A The only thing I discussed was that the same principals appear on this application. I discussed it with Mr. Shiner, and he was sent photocopies.

Q What did Mr. Shiner say to you?

A He asked that I send photocopies.

Q And that's all he said?

A He agreed that this was a new applicant.

Q Did you ever discuss this with Mr. McCarthy? Or O'Brien?

A No, I didn't. However, they were given the financial statement.

Q In fact, wasn't this hand-delivered--hand-carried--down to you by Mr. Carr or someone from Mr. Carr's office, this application?

A I don't know that for a fact. It's a possibility it could have been left or hand-carried down to someone in the office. It was handed to me, "Here." It wouldn't normally be given to me. It would be given to the receptionist.

Q Do you recall any discussions with either me or Mr. Carr or anyone from that organization with respect to this filing on January 24?

A Well, neither you nor Mr. Carr nor anyone else from that firm contacted me when I received that application.

Q Was there any doubt in your mind that subsequent to November 15, 1976, I was authorized to speak on behalf of either Mr. Carr individually or Mr. LeMieux or the Lloyd, Carr group of companies?

MR. LEVIE: Objection. Irrelevancy.

MR. HECHT: I don't think so, Your Honor. They specifically asked the question, "Did Mr. Carr contact you between October 12, 1976, and 1/17/77?" She asked the same question with respect to Mr. LeMieux.

JUDGE PAINTER: It does not harm to answer the question. Were you aware of when Mr. Hecht became counsel for Lloyd, Carr and Co.? Or have any reason to know?

THE WITNESS: I couldn't tell you the exact date that I knew, prior to speaking to Mr. Carr in the middle of December.

Q (By Mr. Hecht) In any event, it was prior to January 17, 1977, that you were aware that I was representing the company?

A That's correct.

Q Have you ever had any problem contacting me?

A No.

Q And have I always returned your calls?

A We haven't had the contacts; we were returning each other's calls.

Q But have you ever known of an instance where I haven't returned your calls?

A I can't remember calling you myself.

Q Or if I tried to contact you?

A On December 22nd.

Q With respect to some of these notes, there's a note down there, "LC and Co.--excuse me, "LCF Co., no, after the 17th."

JUDGE PAINTER: To what are you referring?

MR. HECHT: The Jencks Act notes that counsel for the Division of Enforcement furnished to me.

Q (By Mr. Hecht) There's a note here that says, "LCF Co., no, after 17th." Then there's another note, "LC and Co., yes, 25th-called Shiner." Does that refresh your recollection?

MS. MELZER: Does it refresh his recollection as to what?

MR. HECHT: As to what he discussed with Mr. Shiner.

MR. LEVIE: He hasn't indicated any lack of recollection.

Q (By Mr. Hecht) Isn't it a fact that, as far as you were concerned, on January 25th, 1977, Lloyd, Carr and Co. was acceptable as a registrant, as an FCM?

MR. LEVIE: Objection. Irrelevant, as to what he thought.

JUDGE PAINTER: If I understand it correctly, you are in the business of scrutinizing the applications for CTA's and FCM's, are you not?

THE WITNESS: That is correct.

JUDGE PAINTER: Then I don't quite understand the objection. Is there something I'm missing, Mr. Levie?

MR. LEVIE: Your Honor, what Mr. Cooper thought on January 25th is irrelevant. He can tell what the documents that must be filed with an FCM application are, whether these documents were filed in the application of Lloyd, Carr and Co.. It's been quite clear from the testimony that's come out throughout this hearing that there are other portions of the Commission which have input as to when and whether an application is acceptable for registration. Whether Mr. Cooper thought that Lloyd, Carr and Co. was perfectly adequate or not is irrelevant, because there are financial qualifications that have to be met and enforcement matters.

JUDGE PAINTER: But I assume he would whether the application passed muster for his shop, and that's all he's doing. And I'm sure Mr. Hecht's aware of that.

Q (By Mr. Hecht) Who sends out the letter to applicants if their registration application has been accepted? Doesn't your office, your Division?

A At this time, the letter goes out under the signature of the Acting Regional Administrator.

Q And you are the one who speaks to the Acting Regional Administrator that you have coordinated with the Audit Division and that the FBI checks have all been completed and that they passed muster, isn't that right?

A That is correct.

Q And on the 25th, you were prepared to say to the Assistant Regional Administrator that the application of Lloyd, Carr and Co. as an FCM was acceptable?

A That is not correct.

Q Well, that's what this note says. What does this note mean then?

A I don't know what note you are talking about.

Q The one that says, "LC and Co., yes-25th called Shiner?"

A That means that I told Mr. Shiner that I received a new application in the new name, Lloyd, Carr and Co..

Q But you knew at the time then that Lloyd, Carr and Co. and Lloyd, Carr Financial Co. were similar?

A I knew that two of the three persons listed on the new application were similar.

Q And the third application relates, doesn't it, to a phone conversation that you and I had previously thereto that they just opened up a Greenwich Office and that biographical data information sheet was coming with respect to that person?

A You're saying that the third application was a result of that? You did not tell me that Lloyd, Carr and Co.-- a new application would be filed in that name.

Q Didn't we discuss that they had opened a Greenwich branch office and I advised them to furnish the appropriate form for the branch manager? We'd been through it before, haven't we? On branch managers?

A I remember you telling me about many individuals who were applying as associated persons with British American. You asked for my suggestions on filing those associated person applications for various branches of that firm.

Q Do you recall prior to this particular proceeding, you and I had discussed whether branch managers were required to file biographical data forms with respect to another company?

A I testified to that in another hearing, yes.

Q And it was the position of your particular Division that all branch managers should file such forms even if they were not officers or directors?

A All branch managers are required to file biographical information forms.

JUDGE PAINTER: I just want to point out, Mr. Hecht, that you were wanting to let us get out of here at 4 o'clock today, and as soon as you finish with this witness, we're going to close down the hearing until tomorrow at 9 o'clock.

Q (By Mr. Hecht) Prior to January 26th, 1977, had-- isn't it a fact that no adverse information with respect to the registration application of Lloyd, Carr and Co. had come to your attention within the prior two weeks?

A I was aware that the Division of Enforcement was investigating Lloyd, Carr Financial Co. and its principals, Mr. LeMieux and Mr. Carr.

Q When did you become aware? After that date? After 9:00 a.m. on January 26th?

A That's not correct.

Q Was it before that date?

A Yes.

Q Did they tell you what the basis of their investigation was?

A I didn't get involved in that.

MR. HECHT: I have no further questions.

MS. MELTZER: No redirect.

JUDGE PAINTER: Well, congratulations, Mr. Hecht. You are excused. Mr. Cooper.

THE WITNESS: Can I make a statement, is that all right?

MR. HECHT: No.

JUDGE PAINTER: You mean, you don't want this witness to tell us something. Tell me, Mr. Cooper. If they don't want to hear, they don't have to.

MS. MELTZER: Can we go off the record?

THE WITNESS: Before on item 4(b), when Mr. Hecht asked me about the state in which incorporated, on the application it said actually, "State in which incorporated, organized or established." So if a partnership was established in Massachusetts then that's the answer that we would require in that item.

JUDGE PAINTER: Thank you. You may be excused, Mr. Cooper.

(The witness was excused.)

JUDGE PAINTER: Off the record.

(Discussion off the record.)

JUDGE PAINTER: Back on the record.

MR. HECHT: We have here, Your Honor, three subpoenas for you to sign. They relate to two people located here in Boston, a Mr. Hank Maas and a Mr. Leon Boole, and a third person ebing the person employed by the CFTC, who is responsible for the processing of the application of Mr. Boole for registration as an associated person.

JUDGE PAINTER: I'll hear motions to quash at 9 o'clock in the morning. Do you have any motions, Mr. Levie?

MR. LEVIE: Oh, yes, Your Honor.

JUDGE PAINTER: Off the record.

(Discussion off the record.)

JUDGE PAINTER: Back on the record.

MR. LEVIE: Your Honor, I have examined what has been tendered to the Court, which are subpoenas for Hank Maas, Leon Boole and John Doe, and I would ask at this time before I make my oral motion to quash, for a proffer as to the nature of the testimony which Mr. Hecht expects to elicit and its relevancy to this case.

JUDGE PAINTER: All right, let's begin with Hank Maas, Mr. Hecht.

MR. HECHT: Okay. The nature of the testimony, Your Honor, succinctly put, is one of the things we've raised here is the applications of associated persons, as well as Lloyd, Carr, were treated as a separate entity by the CFTC. I've made a motion on an interlocutory appeal, which I haven't heard yet, with respect to certain data, but to cover myself and to supplement that information, this goes to the fact that an individual who applied for AP status while associated with Lloyd, Carr, they didn't process his application. The minute he went across the street to the competitor, they called him up on the phone, they gave him oral assurance on thephone that day and sent his AP card out the next day.

Mr. Boole is the gentleman who got the card and Mr. Maas is the gentleman who was in here, as a matter of fact, who was the fellow who actually handled the communications between that company and the CFTC; and the other person is a CFTC employee who was handling associated person applications, and I'd like to get from him who instructed him that Lloyd, Carr's AP application should be put over here, but anyone else's should be run right through.

JUDGE PAINTER: Well, one of the problems I see here, Mr. Hecht, is that regardless of any actions on the part of the Commission, there is something quite unique concerning the application for those AP's, namely, the check bounced.

MR. HECHT: Well, the check really didn't bounce, Your Honor. What happened was that--and we'll bring it out in our case--is some unusual things were said to the bank in Greenwich. What they did is, they refused to process any checks and told us to take our $142,000 elsewhere, because they didn't want to get in the middle. I'm putting it tactfully.

JUDGE PAINTER: You mean, the bank dishonored a check that was lawfully issued by--

MR. HECHT: That's exactly right, with $142,000 in the account. And I've got the bank statement. That's all there was in that account, $142,600.

JUDGE PAINTER: And that money was in the account at the time the check issued to--if I'm not mistaken, didn't Mr. Carr indicate that there was a little mix-up on which account it was written on?

MR. HECHT: No. And I've got the bank statement.

JUDGE PAINTER: Mr. Levie?

MR. LEVIE: I'd like to check the transcript, Your Honor. I assume Mr. Hecht is also proffering--there will be testimony under oath that that's what they were told?

MR. HECHT: Right. I will be putting in testimony under oath.

MR. LEVIE: That still strikes me as irrelevant, Your Honor, because the AP applications for Lloyd, Carr were not even signed by the applicants until January 14th, 17th or 18th. The check was dated the 20th,--they, in fact, bounced. It was clear--I think it has already come out and is clear--that the processing time for AP applications is 30 to 60 days--

MR. HECHT: That's why I want this guy to testify, who was processing, because this guy got it on a phone call--on one phone call. And the minute he left Lloyd, Carr, Your Honor,--

JUDGE PAINTER: You know, there's a thin line one passes on when we begin prosecuting the agency, rather than defending against charges, Mr. Hecht. There may be a scintilla or more of merit to having these individuals come in, but at this time I'm inclined to grant the motion to quash. And I think that's not totally because we're running so long in this proceeding.

MR. HECHT: Okay, Your Honor, I should point out that I feel we have raised in the answer that we were treated differently. And I think it also goes to the overall data, because Lloyd, Carr here isn't accused of fraud. It's sole "major sin" was that it was doing business while not yet registered. Why their application really wasn't processed before, you know, that's conjecture and really for the triers of fact to make.

However, I think it shows in here that the company has been discriminated against and the best evidence is, and if, in fact, this is true, this is the fellow who processes the AP applications, and without salesmen, you have no company.

JUDGE PAINTER: Mr. Hecht, I'm going to give you an opportunity to bring this up after Mr. Levie has completed putting on his case and you have begun to put on your case. It may develop that you have--clear-cut discrimination in your part of the case.

I'm granting the motion to quash, for the moment, giving Mr. Hecht a right to raise the matter of the subpoenas at a later time.

MR. HECHT: your Honor, I'm just saying, administratively, the person in Chicago, for them to ascertain who it is and then to serve him, would take some time. The people in Boston are here.

JUDGE PAINTER: Okay, there being nothing more for the record today, we'll adjourn until 9:00 a.m. tomorrow morning.

Off the record.

(Whereupon, at 4:50 p.m., the hearing in the above-entitled matter was adjourned, to reconvene at 9:00 a.m., Thursday, March 17, 1977, in the same place.)

560-703

COMMODITY FUTURES TRADING COMMISSION

In the Matter of:

JAMES A. CARR and CHARLES P. LE MIEUX III
d/b/a LLOYD, CARR & CO., A PARTNERSHIP
84 STATE STREET, BOSTON, MASSACHUSETTS 02109

LLOYD, CARR FINANCIAL CO.
84 STATE STREET, BOSTON, MASSACHUSETTS 02109

JAMES A. CARR

CHARLES P. LE MIEUX III

Respondents

No. 77-6

Room 1110
John McCormack Post Office and
Federal Building
Post Office Square
Boston, Massachusetts

Thursday, March 17, 1977

The above-entitled matter came on for further hearing pursuant to Adjournment, at 9:30 a.m.

BEFORE:

Honorable GEORGE PAINTER, Administrative Law Judge

APPEARANCES:

RICHARD LEVIE, Esq., and ELLEN MELTZER, Esq.,	CFTC, 2033 K Street, NW, Washington, D.C. 20036; appearing on behalf of the Commission.
CHARLES HECHT, Esq., and HAIG COSTIKYAN, Esq.,	Law firm of Charles Hecht, 60 East 32nd Street, New York, New York; appearing on behalf of the Respondents.

APPEARANCES (Continued):

G. LAMAR CRITTENDEN, Esq., Law firm of Barrett & Lamont, 65 William Street, Wellesley, Massachusetts; appearing on behafl of the Respondents.

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PROCEEDINGS

9:45 a.m.

JUDGE PAINTER: On the record.

MR. LEVIE: I have two preliminary matters before we commence with Mr. Carr, Your Honor, if I might.

JUDGE PAINTER: Mr. Levie?

MR. LEVIE: Your Honor, I have reread a certain portion of the testimony from March 15. And I direct the attention of the Court and Mr. Hecht to pages 350 to 351, where the question came up as to what the cut off date would be for introduction of evidence. And I indicated that the subpoena dealt with January 17 - February 23. And Your Honor made the point that you felt it was appropriate to use that as a cut off date for the Division's evidence, rather than keep going and going and going.

I asked on the record whether Mr. Hecht was thereby agreeing to limit his evidence as to fitness to the period ending February 23. So if the books and records -- say, a ledger -- was produced on February 28 for the first time, that would not be admissible in Mr. Hecht's case for the purpose of proving fitness.

And the reason I call this to the Court's attention at this time is, it is unclear from Mr. Hecht's answer whether this proposed order of the Court was acceptable to him. And I would ask that he state on the record what his position is.

JUDGE PAINTER: It was my understanding that Mr. Hecht did so agree, and that he would not attempt to show fitness after the 23rd of February.

MR. HECHT: Well, I think you're misconstruing, Your Honor. With respect to the customer records, you're showing the transactions between that date. When you get to a ledger, I mean, the ledger goes for the whole month. I mean, if you're looking at a cash disbursements ledger, it goes for the whole month, through February -- what was it? -- the 28th. A cash receipts goes through the whole month. I mean, obviously you don't cut that off to the 23rd. And you need those documents to draw your trial balance anyway for the end of February.

JUDGE PAINTER: I don't think Mr. Levie surely is objecting to that part, are you, Mr. Levie?

MR. LEVIE: No. The thrust of my position, and the problem I have Your Honor, if Mr. Carr brings his bookkeeper in here and his accountants, and they testify that in fact the first time they sat down and really prepared the ledgers which they're now seeking to introduce in court was on March 1 or 2, that under the agreement that apparently was reached the other day, that would be inadmissible to bear on fitness.

JUDGE PAINTER: The reconstruction of the books after the 23rd would not be-- it would not be proper for Mr. Hecht to bring that in to show that they were in compliance prior to the 23rd.

MR. HECHT: Your Honor, one of the problems in this case is that, under the law, we were to have notice of what the alleged deficiencies were. And even yesterday, I said, Tell us what you want.

I mean, obviously if they want a certain journal and we say we don't have it but we'll have it prepared that wouldn't normally be required -- the problem is in this case and it's been right at the kernel of this case is that the CFTC has never told us -- these are new regulations -- what specific books and records are required.

JUDGE PAINTER: Well, Mr. Hecht--

MR. HECHT: And I'm not about--

JUDGE PAINTER: Mr. Hecht, I made it quite clear that I felt you should have complied with that order I gave you to permit inspection of those books on -- I believe -- last Friday.

MR. LEVIE: Correct, Your Honor.

JUDGE PAINTER: I feel that you are, in effect, putting all ofyour eggs in one basket in this case. And that your success is hinged almost totally on invalidating the regulations. Now--

MR. HECHT: That's not true, Your Honor.

JUDGE PAINTER: Well, you also have other theories. But--

MR. HECHT: I'd like--

JUDGE PAINTER: --I further stated to Mr. Levie that, if Lloyd Carr & Company were given one or two days to get in compliance, then would that nullify this proceeding? I have suggested that a consent order be issued, and I have suggested some sanction might be imposed other than the ultimate sanction. That's not agreeable to Mr. Levie--

MR. HECHT: But Your Honor--

JUDGE PAINTER: --and you have not agreed to permit--

MR. HECHT: That's not true.

JUDGE PAINTER: --on the spot inspection of the books.

MR. HECHT: Well, we've gone back into the reasons and going back into the testimony in this case with Mr. O'Brien, where they tried to send the audit people up here the following week after. Not for an audit, but for other reasons for the division of enforcement.

The audit division would not come up here, and the division of enforcement said, Okay, we want to come up.

The point is here, and when you mentioned that I said, Fine: Give us a list of what documents the audit division feels is appropriate for a commodity option dealer. Just give us a written list.

So we know -- and we'll tell you -- that if a certain ledger that you think is required is not maintained by us and--

JUDGE PAINTER: Mr. Hecht--

MR. HECHT: Let me just finish, Your Honor.

They wouldn't even-- even March 16, they would not give us a list. All I'm asking from Miss Chan is, give us a list of what you feel are the required records so that a bookkeeper or an accountant can understand exactly what the staff is requiring. That's a very simple, basic, elementary request. Give us that list and I can say, Hey-- and I can go back to the bookkeeper. She can say, Gee, I didn't know whether we were supposed to keep this kind of ledger. We have all the records heere to put it in "a ledger form", and we'll do it.

And I say--

JUDGE PAINTER: Mr. Hecht--

MR. HECHT: --and Mr. Carr has said, they'll work all weekend. But you can't have us doing things when we, ourselves, have not been told. And there's nothing in the regulations saying what books and records are required for a commodity option dealer.

JUDGE PAINTER: Mr. Hecht, I don't want to cover this ground too many times. again, I see nothing in the regulations that would permit a registered broker to reserve the right to permit the CFTC personnel to inspect the books.

To me--

MR. HECHT: Well, Your Honor, we let 'em inspect the books on January 20, 21. And even according to Miss Chan's testimony, as far as the audit people were concerned, they were [illegible]--

JUDGE PAINTER: Mr. Hecht, I am committed to the view that we are bound by the regulations. I am--

MR. HECHT: How about--

JUDGE PAINTER: --certainly bound by the regulations. The regulations simply implement the provisions of the statute. And that's as far as I will look here.

MR. HECHT: The statute, Your Honor, says, after you are registered. Not the regulations. The statute.

JUDGE PAINTER: Mr. Hecht--

MR. HECHT: The statute says, inspection after.

JUDGE PAINTER: Mr. Hecht, I have just pointed out to you that the regulations require that a registered person dealing in options permits the inspection of the books. I so phrased it.

MR. HECHT: That's registered person. We're not registered.

JUDGE PAINTER: I'm aslo aware that it says that a non-registered person shall not engage in the business, under the regulation.

So, at any rate--

MR. HECHT: Your Honor--

JUDGE PAINTER: --I will prohibit you then, Mr. Hecht, from bringing in to this hearing books and records brought up to date after the 23rd of February, 1977. Because this would be to permit one party to show that they have brought themselves in compliance after the 23rd while not letting Mr. Levie bring in evidence of violations after the 23rd.

MR. HECHT: I'd like--

JUDGE PAINTER: Now, Mr. Levie?

MR. LEVIE: I think I would prefer, and request, that the Court's ruling be reconsidered so that we can bring in evidence up to date. And I think Your Honor, with all due respect, that it could be reversible error. And I sincerely and respectfully ask the Court to reconsider to prohibit Respondents from showing compliance up to date because that bears on their fitness.

I'm not trying to make their case, but I think that--

JUDGE PAINTER: Then you are telling me in effect, Mr. Levie, that they can get in compliance and avoid the ultimate sanction--

MR. LEVIE: No, I'm not.

JUDGE PAINTER: And you're telling me this is reversible error at this time if I refuse to permit him to bring in books and records created or constructed after the 23rd, that it would be fatal error for this proceeding.

I think that's an admission on the record, then, that if they get in compliance on the 28th, the 1st of March, then it changes the complexion of the case.

MR. LEVIE: Your Honor, with all due respect, that's not the position of the division. The position of the division is that Respondents should have the opportunity to show compliance. That does not effect the ultimate sanction.

The finder of fact has the opportunity to say, All right, they came into compliance on March 16. In spite of that, a sanction is appropriate. Present compliance only goes to the degree of the sanction to be imposed, if a sanction is imposed. It does not obviate the imposition of a sanction.

JUDGE PAINTER: Well, I fundamentally disagree with you. The record will reflect your remarks and those of Mr. Hecht. I will permit at this time evidence to be put into the record after the 23rd.

M.R HECHT: Your Honor, I'll go one step further. If we get a letter from Miss Chan of exactly what books and records are required, a list, she can come in Monday -- which will give us the weekend if there's something that we don't have -- and she can come in and inspect to her heart's content, subject to your stipulation that they will not use the names-- that she's not coming in as an agent for enforcement.

All we are asking is to give us an opportunity to comply. We're doing the best we can, but we're operating in a vaccuum. We don't know what they want, and they never told us.

JUDGE PAINTER: Mr. Hecht--

MR. HECHT: Give us the letter. That's all we're asking. And we'll do it.

JUDGE PAINTER: I won't ask Miss Chan to do so. But I do think your position reflects a rank disregard of the law. This I am convinced of. I think there is no doubt but what those books are subject to inspection at any time. Right now, tomorrow, the day after. And I feel that this is a risk you're taking. I'm not putting you on notice but I simply cannot accept the theory that you amy reserve the right to let those books be inspected.

Now, we've got the ruling that evidence after the 23rd may be brought into this hearing. Let's begin now with Mr. Carr, Mr. Levie.

MR. HECHT: Your Honor, can I just put one thing on the record? If Miss Chan gets approval from the audit division and we get such a letter-- my client wants to comply with the law. Tell us what to comply with. That's been the problem.

All we've asked is a simple letter saying, These are the books and records that we expect a commodity option dealer to keep. This kind of journal, that kind of journal. Like, for instance, we have an option purchase journal and she said, Well, that does reflect all the income but we want it in the form of a cash receipts journal.

JUDGE PAINTER: I dont want to beat a dead horse, but I take notice of the fact that Miss Chan -- or another auditor -- was not permitted to inspect those books on a day -- when? December 31?

MR. HECHT: Absolutely untrue. That's what-- and no one seems to understand here. They came up on the 20 and 21 of January to inspect. That, from cut point of view, is really the last effective date we have heard from the auditors.

She made one telephone request thereafter to check on their bank confirmations.

JUDGE PAINTER: Now, I want to know, Mr.Levie, the allegation in the complaint, what is the date that access to the books and records that was refused?

MR. LEVIE: I believe it says on or about the-- on January 27. It's paragraph f, page 4 of the complaint.

MR. HECHT: That has nothing to do with the audit staff, Your Honor.

JUDGE PAINTER: All right. I'm--

MR. HECHT: You-- they admitted it. Mr. O'Brien did. That was enforcement, and solely enforcement.

JUDGE PAINTER: But it was not an enforcement person that was to be sent to your office--

MR. HECHT: Oh, yes it was. Yes, it was. As a matter of fact, we asked O'Brien. And O'Brien said, Look, it's not an audit. I don't want to be used as a cover. If it's an enforcement problem, let them send up enforcment people.

JUDGE PAINTER: Well, Mr. Hecht, all I'm concerned with is, was it an auditor? A person who would have some familiarity with those books and records?

MR. HECHT: No, it was not. It was not.

JUDGE PAINTER: Who was the person--

MR. HECHT: Michael Stewart and someone from the division of enforcement. Mr. Levie was in that phone conversation. That was Mr. O'Brien's testimony.

MR. LEVIE: Your Honor, I haven't reviewed the transcript and the testimony that's come out on that specific area. however, my recollection is -- subject to what's in the record -- was that we requested access to the books and records. The original request was to permit an auditor and a person from the division of enforcement. And It was made clear by Miss Chan yesterday that, as an auditor, she has an obligation to obtain information showing any violation of the statute and regulations, even if it deals with an enforcement matter and, thus, outside her immediate division.

JUDGE PAINTER: Thank you.

Let's move on. Now, we have Mr. Carr on the stand. Mr. Carr, you're still under oath. And I'm going to give Mr. Carr an opportunity to make some statement, with the permission of his counsel. But I want it two or three minutes, Mr. Carr.

All right, Mr. Hecht?

MR. HECHT: All right.

Whereupon,

JAMES A. CARR

was recalled as a witness by and on behalf of the Commission and, having been previously sworn, was examined and testified as follows:

THE WITNESS: The conversation to which Mr. Hecht and Mr. Levie refer took place on the afternoon of Wednesday, January 26. There was a conference call involving my office, Mr. Hecht's office and an office at the agency. We took copious notes at this conversation, Your Honor. We had a stenographer there.

For the agency, there was a Mr. Lion, a Mr. Levie, Mr. O'Brien and Mike Stewart. Mike Stewart's remark was, The auditors don't have to come in, Charlie, they're satisfied.

Mr. Hecht said, This is a matter then between Lloyd Carr and enforcement. And Mr. Stewart said, That's right. You would be registered today, Charlie, but for our-- you're not letting us, and I'm from enforcement, "come up and see your books and records."

JUDGE PAINTER: Thank you.

Now, would you like to proceed with direct examination of Mr. Carr?

MR. LEVIE: Yes, Your Honor.

DIRECT EXAMINATION

Q (By Mr. Levie) Mr. Carr, I show you Division Exhibit 17 and ask you if that's your signature?

A It is.

Q Did you write that letter?

A I did.

Q You send that letter to Mr. McCarthy?

A I did.

MR. LEVIE: Your Honor, I move division Exhibit 17 into evidence.

MR. HECHT: No objection, Your Honor.

JUDGE PAINTER: Exhibit-- Division Exhibit 17 is admitted into the record.

(Division Exhibit No. 17 was received in evidence.)

MR. LEVIE: Your Honor, Division Exhibit 19(a) through

19(y), Mr. Hecht and I, I believe, can stipulate that these are official records and can be admitted into evidence. Is that correct, Mr. Hecht?

MR. HECHT: Yes, Your Honor.

JUDGE PAINTER: Division Exhibit 19(a) through 19(y) is admitted into the record.

(Division Exhibit No. 19(a) thru (y) was received in evidence.)

MR. LEVIE: Thank you, Your Honor.

Q (By Mr. Levie) Now, Mr. Carr, with respect to the return of the October 1 FCM application, I believe you testified the other day that you learned of the return of this document from Charles LeMieux III. Correct?

A Yes.

Q And the document to which we're referring is Exhibit 9(a) of the division which you have before you. Correct?

A Yes.

MR. HECHT: Your Honor, I'd like to state for the record that, what happened there is the same last page was used in the refiling. And I think it should be clarified.

JUDGE PAINTER: Mr. Levie will do so, I'm sure.

THE WITNESS: I think this is it.

Q (By Mr. Levie) By this, you're referring to Exhibit 9(a)?

A Yes, Exhibit 9(a) is the application that was sent in September 29.

However, I would also say that I didn't sign this application when it went in. My signature doesn't appear on it. And I'm only saying that it would appear to be, because it bears the stamp-- the official stamp of the CFTC. It says October 1.

Q With respect to the FCM application represented by Division Exhibit 9(a), how did you come to learn that in fact it had been filed?

A I was told that it was.

Q By whom?

A By Charles LeMieux.

Q Did Mr. LeMieux consult with you prior to filing the FCM application?

A I think only that he asked me to fill out a-- I think, but I'm not certain. A biographical form 94.

And then on the other hand, I'm not sure that that wasn't for our CTA application, a couple of months before that. I knew it had gone in, okay.

Q When the FCM application -- Exhibit 9(a) -- was returned, what did Mr. LeMieux tell you?

A Mr. Levie, I don't recall the exact conversation. But he made me aware in substance of the fact that it was returned after what we considered to be a lengthly period of time. And there was no reason given as to why it was returned.

Q When you say we considered it to be a lengthly period of time, what are you talking about?

A Better than a month.

Q Did Mr. LeMieux tell you that there was no reason given for the return?

A We both-- he made me aware that there was no reasons given for the return. Wediscussed it. And it was decided that he would make phone calls to try to find out why.

But, you see, prior to tht, we called to find out what the status-- he had called. Or I should say, he told me that he had called to find out the status of the application. And nobody could tell him. They said, We can't find it. It must be on somebody's-- on somebody else's desk. It's in registration. And so on.

Q Well, to place this initial application in the proper time perspective, if it was filed on October 1 and you said a considerable period of time went by -- at least a month -- before it was returned, would it be fair to say tht the first discussions that you and Mr. LeMieux had regarding the return of the application took place sometime in November of 1976?

A It could have been November. It could have been December.

Q From October 1 until the time that you and Mr. LeMieux discussed the return of the FCM application, did Mr. LeMieux tell you how many phone calls he made to New York?

A He told me that he had made several. A number-- a specific number was not mentioned, I believe.

Q Did Mr. LeMieux tell you with whom he spoke?

A I seem to have the name Forbes or Loehr in my mind.

Q Did Mr. LeMieux tell you what he was told?

A That they couldn't find it. You see, it wasn't-- we dont report to each other on a continuing minute by minute basis. I don't know everything that he does, and every phone call that he makes. Nor does he know every phone call tht I make. I would consider that to be a duplication of effort.

This was his job. This was his problem. This was his assignment. This was his signature on the application whch indicates that. Now, he had indicated to me that things were proceeding in a very unsatisfactory way. That apparently nobody could locate the application. I said, maybe it's somewhere where it would have been if it's approved. He said, I don't know, I can't find out.

Well, you know, what are we doing about it? He's making phone calls. He told-- he got no satisfaction at all. That's all I can tell you. I was aware of it, and that I didn't have anything to do with it until sometime later.

Q So the first time you became aware that the application was returned was sometime at least in November?

A I-- I would say so. I would think so. But I'm not certain.

Q When you had become aware that the application had been returned, did you consult or talk with anyone besides Mr. LeMieux about the returned application?

A You mean anyone in the whole world?

Q Did you have counsel at that time?

A In this matter?

Q Let's go back a step.

In October of 1976, or early November 1976, you became aware that the Commission had proposed regulations for option dealers. Correct?

A Yes.

Q With respect to that matter, did you have occasion to consult counsel?

A I-- I don't know. I dont think so.

Q Did You ever discuss with Mr. Hecht the return of the initial FCM application?

A Sometime as it was getting close to-- as we were becoming increasingly frustrated, Mr. Levie. Initially, I was told by LeMieux that the application could not be located by the agency.

Then I became aware that it had been returned to us with no indication given as to the reason. No reason given for the return.

Then I was told by LeMieux that he had made several calls to try to find out the reason for the return. Then I became aware sometime -- and I would pin this down to the latter part of December -- that he was finally told that there was a deficiency or that some zip codes were missing and a date was missing and a social security number was missing. And they now wanted a new or another or an additional financial statement.

Now, I think that information came to me sometime towards the end of December.

Q From what source?

A From LeMieux.

Q Between the time in November when you learned the application had been-- strike that.

There came a time when you spoke to Allen Cooper. Correct?

A Yes.

Q When was that?

A Okay, now, the Canadian operation started to require more of LeMieux's time. And just about all of the time. When he moved up to Montreal, I was left with this-- with this matter. And it was for that reason that I placed a couple of phone calls, unsuccessfully for some time -- although finally I did get a call back from Mr. Loehr. I asked him a couple of questions. He-- I seem to remember that he could not answer them. I think regarding whether or not a social security number was required. Because I had in front of me a piece of paper issued by the agency that indicated it was not necessary, and I couldn't understand his making that one of the reasons for the return.

Then he got a hold of Mr. Coqper and Mr. Coooper-- either Mr. Cooper called me or he asked me to call Mr. Cooper.

We settled the matter-- we more or less settled the matter of the social security number. He indicated that zip codes were necessary. I thought it was kind of a silly reason for returning it. And that a new financial statement was required.

Q Did this conversation between you and Mr. Cooper, according to your recollection, take place in December of 1976?

A I would say that it was somewhere between the end of the first week in December and the end of the first week in January.

Q No chance that your conversation with Cooper could have taken place in the middle of November, 1976, is there?

A There's a chance. I would consider it unlikely.

Q Now, going back to the time period between the return of the application and the end of December, did you speak to Mr. Hecht regarding the returned FCM application?

A Between when?

Q November when you found out the application had been returned, and the end of December?

A I didn't discuss this matter with Mr. Hecht until Mr. LeMieux moved to Montreal.

Q Which was when?

A Which I think was in the middle of-- middle of December maybe. Give or take a week or 10 days.

Q Before Mr. LeMieux left, did he tell you that he had spoken with Mr. Hecht regarding the returned application?

A No. I-- it was my distinct impression that he had not ever discussed it with Mr. Hecht, or ever even spoken with Mr. Hecht.

Q Had you called anyone between the return of the application in November and the end of December to talk to Mr. Hecht or any other counsel regarding the returned application?

A I did talk with Mr. Hecht about this maybe around the end of December. Apparently, now that I'm thinking of it, apparently I had not-- it was prior to my conversation with Mr. Loehr or Mr. Cooper.

And I spoke with Mr. Hecht. I said, They won't give me a reason. They haven't given us a reason. We dont know what going on.

And then, as I understand it, he became involved in some conversations with registration, or somebody. And then he sent me a copy of a deficiency letter which the agency had said was in the record-- in their file.

Q Well, that--

A That may have been early in January also.

Q Well, we'll get to that.

Still staying in the time period, to answer the earlier question, from the return of the application until December, did you cause anyone to speak with Mr. Hecht or any other counsel regarding the returned application?

A Did I cause Mr. Hecht to speak to--

Q Did you ask Mr. LeMieux, did you ask Mr. Labus, did you ask anyone on behalf of your company -- Lloyd Carr Financial Co. -- to contact Mr. Hecht or any other counsel concerning the return of that FCM application?

MR. HECHT: Objection to the form of the question.

I think it's pretty well-- not to confuse the record, but these really are one and the same company -- Lloyd Carr & Co., and Lloyd Carr Financial.

JUDGE PAINTER: I think Mr. Carr understands.

Answer the question, please.

THE WITNESS: No other counsel was contacted in any matter involving Lloyd Carr vis-a-vis the CFTC. That's number one. No other counsel.

Number two, I don't believe that anyone else in my company contacted Mr. Hecht regarding this application.

Q (By Mr. Levie) In any event, no one told you they had spoken with Mr. Hecht or other counsel about this application. Correct?

A Of course.

Q Now, you had sent the Commission a $200-- let me rephrase tht.

Lloyd Carr Financial Co. sent in a check for $200 to accompany the original FCM application?

A Correct.

Q And that check was cashed?

A Right.

Q Now, sometime between the period that check was cashed and returned to your firm-- if I might rephrase that.

There came a time when you realized that the check had been cashed, and your application hadn't been processed yet. Correct?

A Yes.

Q And the government still had your $200, didn't it? Or the firm's $200?

A Yes.

Q Did that fact alone lead you to take any steps to find out what happened to the initial application?

A You know, oddly enough, the checks on the corporate-- on the Lloyd Carr Financial at that time required two signatures. Mine and LeMieux. And the check was sent out only with his signature on it. Which would again indicate that I had less than anything to do with it. And--

Q Well, did Mr. LeMieux ever come to you-

MR. HECHT: Let him finish his answer.

THE WITNESS: And that check was initially -- and I only found this out very recently -- initially returned by the bank for lack of a second signature. It was then, without any conversation between any of the people, it was then automatically redeposited. And oddly, was paid. Even though the second signature never did appear on it.

Now, the government had our $200, yes. I was aware tthat they had our $200, yes.

Q (By Mr. Levie) But the original question was, did you or Mr. LeMieux take any action based on that fact alone to find out why the application had not been processed?

A Do you mean, were we any more concerned because there was $200 involved?

Q Yes.

A No. I would consider that a relatively insignificant sum.

Q In January, Mr. Hecht told you that the Commission denied ever receiving the application of Lloyd Carr Financial Co. Correct?

A Yes.

Q Did Mr. Hecht tell you where he obtained that information?

A No.

Q Did you ask him?

A I think he said your agency made a representation in court that you never got our application from us.

Q Well, what did Mr. Hecht tell you--

A That's all I know. Just exactly that.

Q Did you ask him any further questions about it?

A He asked me to-- he asked me-- this is-- what is the date you're referring to?

Q On January 16, you indicated in an affadavit that "today surprisingly our counsel has advised us that the Commission has denied that we ever submitted an application". And this is in an affadavit which I'll show you, executed James Carr, doing business as Lloyd Carr Financial Company.

A I said nothing that's inconsistent with that.

Q But my questions only were to find out from you what exactly-- what exact information Mr. Hecht gave to you on January 16--

A He indicated that we had never filed an application.

He indicated tht you said, or your agency said, in some court or something that we had never filed an application. And I said that that's crazy. There's a time stamp on it that says October 1. I remember that.

Q And you also knew from your conversation with Mr. Cooper, did you not, that an application had been filed?

A Sure.

Q Did you only have one conversation with Mr. Cooper?

A I think that was only one conversation.

Q Sometime in the mid to end of December of 1976. Is that correct?

A I-- didn't I just say it was somewhere between the end of the first week in December and the end of the first week in January?

Q As a result of that conversation with Mr. Cooper, did you have discussions with Mr. Hecht?

A I don't remember.

Q Well, if I understood your testimony, Mr. Cooper for the first time called to your attention the deficiencies in that telephone conversation sometime in December or early January?

A Mr. Loehr did first. And then I asked a question and that's how Cooper came into it.

Q When did Mr. Loehr point out the deficiencies to you?

A In a day or an hour or something before Cooper spoke with me.

Q When you-- once you found out what those deficiencies were, according to your testimony, did you talk to Mr. Hecht regarding those deficiencies?

A We had-- yeah, we did have conversations concerning that.

Q What did Mr. Hecht tell you to do with respect to those deficiencies?

A I didn't ask him waht to do.

Q Did you and Mr. Hecht discuss when a new application would be resubmitted?

MR. HECHT: Your Honor, I should point out that I think you're getting into attorney-client privilege here. And I've let him go because it is an administrative hearing. But enough is enough.

JUDGE PAINTER: Sustained.

Q (By Mr. Levie) Mr. Carr, approximately two weeks prior to January 16, you indicated in an affadavit that you found-- received a telephone call and were told certain additional information was required, which information was acknowledged would take some time to gather. Is that corfect?

A Yes.

Q What was that additional information?

A They wanted another-- another financial statement.

Q And that came to you in the telephone conversations from Mr. Loehr or Cooper?

A It would-- it only would have come to me in a phone conversation, because we never recieved anything in writing.

Q But a telephone conversation with Mr. Loehr or Mr. Cooper?

A One or the other, yes.

Q There came a time when you first saw Division Exhibit 10, which is a letter of October 12, 1976. Correct?

A Yes.

Q When is the first time you saw a copy of Division Exhibit 10?

MR. HECHT: Objection. It's been asked and answered about five minutes ago.

JUDGE PAINTER: Let's hear it again.

THE WITNESS: Sure. When the mail that Mr. Hecht sent me was opened.

Q (By Mr. Levie) And that was in January of '77?

A I-- thereabouts. Maybe-- again, sometime in the last several weeks in December or the first week in January.

Q Did Mr. Hecht tell you where he had obtained that letter?

A No. I don't think so. Or he may have, and I forgot.

MR. HECHT: If the tribunal so wants, I can put on the record how I obtained the letter.

JUDGE PAINTER: Interested, Mr. Levie?

MR. LEVIE: Not unless it's under oath, Your Honor. Just because I dont think representations of counsel are any part of a record. That's all.

MR. HECHT: I made the offer.

JUDGE PAINTER: Thank you, Mr. Hecht.

Q (By Mr. Levie) When you first saw a copy of the letter which is represented by Division Exhibit 10, did youhave any-- did you say anything to Mr. Hecht regarding that letter?

A Yup.

Q What did you say?

A Thanks. It's the first time I'd seen it. And I conveyed that to him.

Q Mr. Carr, I believe there has been some testimony -- if we might shift to another area -- that customer money from either Lloyd Carr Financial Co. or Lloyd Carr & Co. were placed in a segregated account.

Could you explain that, please?

A Could I explain what?

Q Did there come a time when moneies of either Lloyd Carr Financial or Lloyd Carr & Co. customer monies were placed in a segregated account?

A Are you acknowledging that the account that we use, you accept as a segregated account?

MR. LEVIE: I believe there was testimony from you on past days where Lloyd Carr either Financial or Co. had presented itself as being the vanguard of the industry and that one of the steps the firm had taken was to place customer's money in a "segregated" account for some period of time and I'm just asking, could you explain what was meant by that, or correct me if I'm wrong.

THE WITNESS: First of all, I don't remember testifying to that. And I'd appreciate it if you could jog my memory a little or something.

MR. HECHT: Maybe I can help. If he would rephrase the question by saying what is Mr. Carr's understanding re the segregated account or what the company terms the segregated account, we would solve the problem.

MR. LEVIE: Thank you, Mr. Hecht, Mr. Carr?

THE WITNESS: We had proposed to the Division sometime in November that we had a method of segregation of funds that we proposed a plan that would protect the customer's equity and return on the option as well as his premium and that would permit the company to stay in business.

When the Division didn't reply to that suggestion, we then instituted what we call our customer segregated account, which involves the following: money would be received when we signed an agreement with the bank in which it was recognized that a new bank account was opened, it was recognized by the bank, the paper that was signed by both the bank and ourselves that that money did not belong to the company and could not be attacked by a creditor of the company or could not be used by us or mixed with our own funds and so on. Until, substantially this is the way it would work, money would be taken out of that account. The customer sent us a check for let's say $10,000. It would go into the account. Money would come out of that for the purchase of the option only. When we received a confirmation that the option had been purchased, we would then consider the balance of the $10,000 not used to purchase the option as having been earned by our company. That money would either within a reasonable amount of time be withdrawn from segregated funds as it was now ours, either withdrawn from the segregated account and put into our operating account or withdrawn and used directly for other purposes.

One more thing, additionally all funds received from the broker in London on the exercise of the option would be transferred not to our operating account or any other account, but directly to that segregated account from which it would be issued to the customer or used if he so desired to purchase another option.

Q (By Mr. Levie) Just three or four questions on this before we move on. What is the name of the bank at which this account was established?

A U.S. Trust Company.

Q Here in Boston?

A Yes

Q When was it opened?

A And there's one in St. Louis also.

Q When was the U.S. Trust Company account opened to which you referred?

A Sometime in January.

Q Is it still open?

A Oh, yes.

Q In your testimony the other day, Mr. Carr, you made reference to having seen a news release put out by the commission on January 13 of this year regarding the time it takes to process AP applications. If I might have this marked as the Division exhibit.

A I saw another one yesterday that changed the date from March 7 now, to March 18.

MR. LEVIE: May I have this marked?

(Division Exhibit No. 28 was marked for identification.)

Q (By Mr. Levie) I show you, Mr. Carr, what has been marked Exhibit-- Division Exhibit 28 for identification. I ask you if that is the release you saw on or about

January 13 or 14, to whch you referred in your earlier testimony?

A Give me a few minutes to read this.

MR. HECHT: Your Honor, just so we limit the scope of this, let me note my objections for the record, that there is a dispute apparently or a difference of opinion between the agency or the general counsel's office and the members of the industry about this December 27 "cut off date", which was exactly six days after Judge Knapp's decision which was on the evening of the 21st. And then you had your Christmas weekend.

And many members in the industry were awaiting that decision because that issue was specifically requested.

JUDGE PAINTER: Thank you, Mr. Hecht. Although I will permit you to examine Mr. Carr on this issue almost at will, I am a little concerned as to whether this really is relevant to the proceeding, segregated funds.

MR. LEVIE: Segregated funds has nothing to do with this, Your Honor. This matter I'm dealing with now has nothing to do with segragated bank accounts. I'd moved from that subject. Judge Knapp's ruling on the segregated funds has nothing to do with this case.

MR. HECHT: We should clarify that segregated-- that segregation as the commission has defined it is a different segregation, or a different set up, than Lloyd Carr. What

Lloyd Carr does is, in effect, what brokerage houses do with free credit balances. So there's not confusion. That was set up on his own, I understand. It has nothing to do with any rules. He just felt it was appropriate for customer protection.

THE WITNESS: This is interesting, Mr. Levie, but it's not the one I referred to. And I don't think it has the same date. It's not January 13.

Q (By Mr. Levie) Do you or does your firm have a copy of the release you saw on January 13?

A Yes.

MR. LEVIE: Might I request, Your Honor, that that be produced?

THE WITNESS: Just to be sure we're talking about the same thing, would you refresh my memory? What is it that I referrred to? I think that I know but I want to be sure.

MR. LEVIE: If I might--

JUDGE PAINTER: Off the record? Or on?

MR. LEVIE: It can be done off the record. I'm going to give Mr. Carr a copy of his transcript.

JUDGE PAINTER: Off the record.

(Discussion off the record.)

JUDGE PAINTER: Back on the record.

Q (By Mr. Levie) Mr. Carr, to vourknowledge, was a 1-FR financial statement filed with the original FCM application on October 1?

A I believe that it was.

Q And how did you come to that belief? From what source?

A I came to that belief during-- I had the belief shortly after or during the time LeMieux was filling out the FCM application. And I didn't really give it much thought until my conversation with Cooper or Loehr, who indicated he wanted another one.

Q Did Mr. LeMieux talk to you about the details of preparing the 1-FR to go with the 10-1 application?

A No, not really.

Q When you filed the application for FCM registration-- let me rephrase that.

When you-- when Lloyd Carr Financial Co. filed an application for registration as a CTA, did the firm keep a copy of that application?

A I don't know.

Q When Lloyd Carr Financial Co. filed an FCM application on October 1 -- it was received by the Commission on October 1 -- did the firm keep a copy of that application?

A I don't think so. Again, I had nothing to do with it, really. I went through LeMieux's files after he went up to Montreal, looking for whatever evidence I could find. But I didn't find any.

Q Is there a place at Lloyd Carr Financial Co. or Lloyd

Carr & Co. where copies of documents which are filed with any agency would ordinarily be kept?

A Well, there are two places. LeMieux had his files. When we're talking back to September, we really didn't have much in the way of clerical help. So LeMieux kept his files, and I kept mine.

When he left, I sort of combined the two.

Q In searching or reviewing both sets of files, did you ever find a copy of a 1-FR dated on or about October 1, 1976?

MR. HECHT: Objection. Asked and answered just two minutes ago.

JUDGE PAINTER: No harm. Let him repeat himself on the record.

THE WITNESS: I said I don't recall having seen it. Nor did I see the copy of the FCM application.

MR. LEVIE: May I have this marked as Division Exhibit No. 29?

(Division Exhibit No. 29 was marked for identification.)

MR. HECHT: Do you have a copy for me?

MR. LEVIE: Yes.

Q (By Mr. Levie) Mr. Carr, I show you Division Exhibit 29 for identification and ask you if that's your signature on the bottom of page 2?

A Yes.

Q Is that the 1-FR that was filed under the name of Lloyd Carr & Co. on or about the 25th of January of this year?

A It looks like the 24th of January.

Q It was signed the 24th?

A Yes.

MR. LEVIE: Your Honor, I move into evidence Division Exhibit 29.

JUDGE PAINTER: Any objection, Mr. Hecht?

MR. HECHT: Your Honor, I'm kind of confused because they had another one they put in the other day of this date, too. And I'm a little confused as to which is which.

JUDGE PAINTER: Mr. Levie, could you clarify?

MR. LEVIE: Yes, Your Honor.

Division Exhibit 23 is a 1-FR of January 16 for Lloyd Carr Financial Co. Division Exhibit 24 is a 1-FR of January 20, '77 for Lloyd Carr Financial Co.

Exhibit 29 is the 1-FR received by the agency on the 25th of January, signed by Mr. Carr on the 24th.

JUDGE PAINTER: And this is for Lloyd Carr and--

MR. LEVIE: And co.

THE WITNESS: This is the same one as that one, but they had asked me to put the different name on it.

Q (By Mr. Levie) When you say the same one, so the record is clear, you're saying that the substance of Division Exhibit 29 -- the figures -- are the same as the figures on Division Exhibit 24?

A Yes.

JUDGE PAINTER: The exhibit is now admitted into the record.

(Division Exhibit 29 was received in evidence.)

MR. LEVIE: Thank you, Your Honor.

MR. HECHT: I have no objection, Your Honor.

MR. LEVIE: Your Honor, may we go off the record for two minutes and have three documents marked?

JUDGE PAINTER: Off the record.

(Discussion off the record.)

JUDGE PAINTER: Back on the record.

Those exhibits are marked, Mr. Levie. Continue.

(Division Exhibits Nos. 30,31 & 32 were marked for identification.)

Q (By Mr. Levie) Mr. Carr, I show you Division Exhibit 30 for identification. I ask you if that's a copy of a letter your wrote?

A Yes.

Q I show you Division Exhibit 31 and ask you if that's a copy of a letter you wrote?

A Yes.

Q And I show you a copy-- I show you Division Exhibit 32 and ask if that's a copy of a letter your wrote?

A Yes.

MR. LEVIE: I move Division Exhibits 30, 31 and 32 into evidence.

JUDGE PAINTER: Objections?

MR. HECHT: No objection to 30.

JUDGE PAINTER: So admitted.

MR. HECHT: 31 no objection.

JUDGE PAINTER: Exhibit 31 is admitted.

MR.HECHT: No objection to 32.

JUDGE PAINTER: Division Exhibit 32 is admitted into the record.

(Division Exhibits No.s 30, 31 & 32 were received in evidence.)

MR. LEVIE: Your Honor, I would-- I wonder if Mr. Hecht and I might stipulate that Division Exhibits 18(a) through 18(f) -- which they were provided on Tuesday for examination -- are true and accurate copies and may be admitted into evidence.

MR. HECHT: No objections.

JUDGE PAINTER: So stipulated and admitted.

(Division Exhibit No. 18(a) thru (f) was received in evidence.)

Q (By Mr. Levie) Now, Mr. Carr, I direct your attention to-- does Lloyd Carr & Co. presently have branch offices other than Greenwich, Connecticut?

A Yes.

Q Where?

A St. Louis.

Q any others?

A No.

Q Is Lloyd Carr Canada considered a branch office?

A No.

Q Has the Commission been notified of the branch office in St. Louis? To this date?

A No.

Q How long has the St. Louis office been in operation?

A About three weeks. And doing very well.

MR. HECHT: Mr. Levie, on the record, I know that the Division of Enforcement is aware because they have called. They've made a number of calls. And we can give you the name of the gentleman who called.

It's not in writing, but I know they're aware.

Q (By Mr. Levie) Mr. Carr, if Mr. Hecht swore in an affadavit that Lloyd Carr has a net worth of over $500,000 with offices in four cities, would that representation be incorrect?

A Don't ask me to make-- don't ask me to judge him. It's ridiculous.

Q You only have offices in Boston, Greenwich and St. Louis?

A What do you mean by an office? Now, let's define that.

JUDGE PAINTER: Mr. Carr, do you do business in the cities listed by--

THE WITNESS: We have an office being built in another city. And you might say that we have four offices. We are operating in three places.

JUDGE PAINTER: Off the record.

(Discussion off the record.)

JUDGE PAINTER: Back on the record.

MR. LEVIE: Your Honor, off the record I made a proffer to Mr. Hecht regarding the status of the AP applications of Lloyd Carr personnel. And of the first 38 that were submitted, at least one person went to another firm. I don't know the status of one. But of those 36 (sic) which were pending, I indicated 20 were approved. And then gave him the breakdown as to the remaining 16. And I've offerred to produce William Pollock, who handles the AP applications in Chicago for this hearing, if Mr. Hecht wants him, but I request that we have at least a day's notice to get him.

MR. HECHT: Your Honor, A, I would like, and B, I think Mr. Levie shoudl point it out that these were only approved on March 11. And at least one good thing is coming out of this evidentiary hearing -- those got processed.

And I would like to see Mr. Pollock under oath to explain why then and not before. Very simply. Of course, that depends really -- and I haven't heard yet from the Commission -- on the interlocutory appeal.

JUDGE PAINTER: I have no control over that.

MR. HECHT: But I think we should note that, that's one of the problems. We should really wait until they come down and tell us what we're entitled to.

JUDGE PAINTER: We've got to get Mr. Carr back to his business. You indicated that he is needed there. So let's expedite and move this thing along.

All right, Mr. Levie.

MR. LEVIE: Thank you, Your Honor.

Q (By Mr. Levie) Mr. Carr, did you discuss with Mr. LeMieux whether Lloyd Carr Financial Co. should continue to sell options, regardless of whether or not they were registered as an FCM?

A It was discussed.

Q When?

A Oh, on or about the 17th or the 18th or the 19th.

Q Of January?

A Yes.

Q And were any decisions made at those discussions between you and Mr. LeMieux?

A I think the decision is obvious, Mr. Levie. We continued to sell options.

Q And did Mr. LeMieux concur in that decision? Was it a joint decision between you and Mr. LeMieux?

A I--I-- it was the kind of decision that is kind of familiar to me. It was a foregone conclusion that we would.

Q You didn't oppose that decision, did you?

A No.

Q Mr. LeMieux didn't oppose it?

A No.

Q When January 24 came and the effective name of Lloyd Carr Financial Co. was changed to Lloyd Carr & Co.--

MR. HECHT: Objection to the form of the question. I think it's misphrased. There was not-- there was no effective name change as far as what's considered-- it was only with respect to the application and at the request of the staff. That's not a name change under state law.

JUDGE PAINTER: What was your question again, Mr. Levie?

Q (By Mr. Levie) After January 24-- let me rephrase that.

Did there come a time when you and Mr. LeMieux discussed whether Lloyd Carr & Co. should sell commodity options without having received registration as an FCM from the Commission?

A Didn't I just asnwer that?

Q The previous question was Lloyd Carr Financial Co. Now, I'm asking you about Lloyd Carr & Co.

A We considered them both the same. And we didn't evendiscuss the name. We only discussed the question of selling options.

Q So your answer then would be the same -- that it didn't matter what name you used. The sales would continue past the 17th without registration. Correct?

A That's correct.

Q Did you have occasion to discuss with Mr. Hecht whether Lloyd Carr Financial Co. or Lloyd Carr & Co. should continue selling commodity options after the 17th without being registered as an FCM?

MR. HECHT: Note my objection on the attorney-client privilege. If you want to waive it, you can. It's an individual. You're a partnership.

JUDGE PAINTER: I think the attorney-client privilege would apply to any advice he received.

MR. HECHT: That's right.

JUDGE PAINTER: I think it would be appropriate -- it's my understanding, Mr. Hecht, that he can stated whether he brought the question up with counsel.

MR. HECHT: Oh, I agree. But I want to put it down now so we know the parameters.

JUDGE PAINTER: Yes.

So you will answer as to whether or not you discussed the matter with your attorney. You need not tell us the details of that conversation.

THE WITNESS: Or who the attorney was?

MR. LEVIE: The question was, with Mr. Hecht.

JUDGE PAINTER: With Mr. Hecht, who is your counsel.

THE WITNESS: You mean I have to tell you whether I discussed this-- discussed a certain subject with my lawyer?

MR. LEVIE: I'm not asking you at this point for the substance of this conversation. I'm asking whether a discussion took place.

THE WITNESS: You're asking me if I had a conversation on a certain subject with my lawyer?

MR. LEVIE: Yes.

MR. HECHT: Yes, you can answer. Let's--well, let me explain to Mr. Carr--

THE WITNESS: Yes, I did.

MR. HECHT: Technically you can answer that question yes or no. Whether you had a discussion is not really within the attorny-client privilege. My understanding of the attorney-client privilege is what advice the attorney rendered to you comes within that privilege.

THE WITNESS: Yes, I did.

Q (By Mr. Levie) And what did you tell Mr. Hecht in that conversation--

A I don't believe this. I don't believe you.

MR. HECHT: I think that, because that relates definitely to the advice. If we can go off the record, let me discuss that with Mr. Carr and maybe we can resolve it.

MR. LEVIE: He does have the privilege of waiving.

JUDGE PAINTER: Off the record.

(Discussion off the record.)

JUDGE PAINTER: Back on the record.

MR. HECHT: Your Honor, a brief statement.

Although my client has the attorney-client privilege individually since he's named as an individual Respondent and this is a partnership, he felt that under the circumstances it would be appropriate to waive this privilege because he just felt under the circumstances people are entitled to know all of the facts.

JUDGE PAINTER: Thank you, Mr. Hecht.

Your question now, Mr. Levie?

Q (By Mr. Levie) Mr. Carr, did Mr. Hecht accurately represent your position in this matter?

A When did I waive that? When did I waive that right?

MR. HECHT: You didn't waive it. This is an administrative hearing. And we talked outside and you said you would answer the questions.

THE WITNESS: No. I said that I would explain what caused me to make the decision to continue operating. I didn't say that I would disclose anything that you said.

MR. HECHT: Okay, do you want to do it that way, they can draw their own inference.

JUDGE PAINTER: Then you are reserving-- you're not waiving your privilege? You did have a discussion with Mr. Hecht. Please give Mr. Levie the date. You don't have to tell him what you discussed.

THE WITNESS: We-- Mr. Hecht and I discussed it several days prior to the January 17 date. And several days subsequent to that, to that date.

Q (By Mr. Levie) When you say we discussed, you mean discussed whether or not the firm should continue selling options after the 17th without being registered?

A We explored that together.

Q And following the conversation-- was it more than one conversation you had with Mr. Hecht? On that subject.

A We had continuing conversations concerning that, and our anticipated-- your anticipated reaction to whatever decision we would make.

Q And having had those discussions with Mr. Hecht, Lloyd Carr Financial Co. and Lloyd Carr & Co. continued to sell options after the 17th?

A Yes.

Q Did you have occasion to discuss with Mr. LeMieux whether the salesmen of Lloyd Carr Financial Co. or Lloyd Carr & Co. should continue selling options after the 17th without being registered as associated persons?

A I don't know that we discussed-- I don't know, really.

Q Did you ever have discussions with Mr. Hecht regarding the subject of APs-- excuse me. Of employees of your firm selling after the 17th without being registered as APs?

A Yes.

Q And following that conversation or conversations with Mr. Hecht on the subject of APs, did the employees of Lloyd Carr Financial and Lloyd Carr & Co. continue to sell options after the 17th?

A Yes. Their applications were in and--

JUDGE PAINTER: You've covered these questions so many times, Mr. Levie. I would not like to have them repeated continuously throughout the hearing. There's simply no question about the sale of options by these associated persons, or the condonement of it or encouragement of it by Mr. Carr.

Q (By Mr. Levie) Mr. Carr, in deciding what date to resubmit the FCM application -- then in the name of Lloyd

Carr Financial Co., was one of the factors in your mind how Judge Knapp would rule on the option regulation litigation?

A Hadn't Judge Knapp already ruled?

MR. HECHT: What day are you talking about?

MR. LEVIE: Its my understanding that Judge Knapp ruled on December 21.

Q (By Mr. Levie) Prior to December 21 of last year, did you decide to withhold resubmitting the FCM application until it was determined how Judge Knapp would rule--

A No, no. We submitted the application on September 29 before there was even a requirement for it. We submitted the application actually because we wanted to be futures commission merchants and trade in futures.

Q So your testimony is that the possibility of Judge Knapp's decision one way or the other had no effect on the timing of the FCM application filed?

A I would say that's correct.

MR. HECHT: Your Honor, I would like to state an objection for the record. The original suit wasn't filed, with respect to the original regulations on October 8 until November 15, 1976.

JUDGE PAINTER: Your comments are in the record.

Q (By Mr. Levie) Now, I think the final matter we have, Mr. Carr, is subpoena compliance. If I might show you

Division Exhibits 15(a) through (f)-- excuse me. That's 15(a) through (x), 18(a) through (f), 20(a) through (h), 21(a) through (w), and 22(a) through 22(aa) all of which were tendered to your counsel on the 15th for inspection.

My question is, do those group exhibits -- 15, 18, 20 through 22 -- represent, as either orders or confirmations, all option orders placed by the Boston office of Lloyd Carr Financial Co. or Lloyd Carr & Co.?

MR. HECHT: I believe that we spoke before on the record that he's going to personally check back during lunch time, which will be in the middle of his cross examination, and give you an answer after lunch. That's what we stipulated earlier this morning.

JUDGE PAINTER: It was stated earlier.

MR. LEVIE: If there's any question, Your Honor, I'd much prefer to give him-- Mr. Carr additional opportunity over the lunch hour to make certain that all of the group exhibits represent all of the orders, rather than get a tentative answer now.

JUDGE PAINTER: Very well. We'll withhold the answer until after the lunch break.

MR HECHT: Your Honor, I think the witness wants to say something.

THE WITNESS: It's very simple. These transactions-- each option order-- each transaction is numbered. And even if one is voided, that number is not used again. And it's put in a bound book. So it's very easy. If it goes consecutively from one number to another, it includes every one.

JUDGE PAINTER: Well, Mr. Carr, I believe you produced those records--

MR. LEVIE: And they were not consecutive.

JUDGE PAINTER: --for Mr. Levie. Well, they are not in consecutive order and you were supposed to produce them all.

Now, the question is, have you done so? And you say you're not sure now because they're not in consecutive order. Is that correct?

THE WITNESS: No. I-- yes, I would say that. For me to make a statement that these are everything that has been-- every order between January 17 and February 23, I would have to see that every single number appears here.

JUDGE PAINTER: You've got to make sure whether you did what you were supposed to do. All right, you do that during the lunch hour and come back and we'll get the answer at that time.

MR. HECHT: Your Honor, I should point out another thing. That this was obtained from the back office. I mean, there were a number of people. Mr. Carr personally didn't go. And that's what Mr. Levie is asking. Did you personally check the back office people--

JUDGE PAINTER: Nevertheless, it's the responsibility of the Respondent to bring in these particular records. And I'm asking you then, Mr. Carr, to make certain that these are correct when you return to your office during the lunch hour.

THE WITNESS: You mean I personally have to look at every transaction?

JUDGE PAINTER: Well, you're coming in here to testify. You're the one under oath, Mr. Carr. And I dont want you to make any misstatements under oath.

So I think it behooves you to make certain that they are correct.

THE WITNESS: How am I going to do that?

MR. LEVIE: Your Honor, all my remaining questions deal with subpoena compliance and when documents were prepared, such as this customer ledger sheet which we've been given with the names taken out.

Therefore, we--

JUDGE PAINTER: You move to recess at this time?

MR. LEVIE: I would have to, Your Honor, because Mr. Carr is the one who will have to answer all of these questions. And the question still remains on the trial balance. I have some questions as to the Rudolf Wolf confirmations to just be explained.

JUDGE PAINTER: If we do recess now, would you make certain that Mr. Carr understands what you see the deficiencies are in the records produced? I woiuld really kind of like to get three or four hours down this afternoon of good, solid testimony, the taking of evidence.

We'll recess until 1:30.

Off the record.

(Whereupon, at 11:35 a.m., the hearing was recessed, to reconvene at 1:30 p.m. the same day.)

AFTERNOON SESSION

1:40 p.m.

JUDGE PAINTER: On the record.

We were, I believe, ready to have the Witness testify as to some records he himself was to produce. Do you have those, Mr. Levie?

MR. LEVIE: I have some, Your Honor, but I have some additional questions before we get into that.

JUDGE PAINTER: Very well.

MR. HECHT: I thought he had finished his questioning and was just going into that particular matter.

JUDGE PAINTER: Well, let's hear the thoughts that have occurred over the lunch hour.

MR. HECHT: And a half.

DIRECTS EXAMINATION (Continued)

Q (By Mr. Levie) Mr. Carr, are account executives for Lloyd, Carr & Co. continuing to offer half options for sale to the public?

A We stopped for awhile, and we are offering some of them. We have sold some of them at this time, recently.

Q The records of Lloyd, Carr Canada were ceased by the Canadian authorities within the past week or two, is that correct?

A Yes.

Q Are the records there still in the possession of the Canadian authorities?

A No.

MR. HECHT: Were they released today?

THE WITNESS: Yes. Yesterday.

MR. HECHT: They were released?

JUDGE PAINTER: One at a time. Let the Witness answer the questions.

Q (By Mr. Levie) I take it from the whole colloquy between you and Mr. Hecht the records, at least as of today, of Lloyd, Carr Canada are back in the possession of that company?

A That is correct.

Q And is Lloyd, Carr Canada presently placing orders in London on behalf of customers of Lloyd, Carr & Co.?

A Yes.

Q For how long were the records of Lloyd, Carr in Canada in the possession of the Canadian authorities?

A I'd like to ask the question. Is this an investigation of Lloyd, Carr of Canada?

JUDGE PAINTER: Answer the question.

MR. HECHT: Just answer it. I don't think it's that relevant.

JUDGE PAINTER: There's no harm done. It just states how long they were in the possession of the Canadian government.

MR. HECHT: Let me note my objection on the record as to relevancy.

JUDGE PAINTER: It's noted.

THE WITNESS: About a week.

Q (By Mr. Levie) During that week did Lloyd, Carr & Co. continue to place orders for options with Lloyd, Carr of Canada?

MR. HECHT: I'm going to objection.

I just think this is so far outside the scope of the Complaint on any of the issues.

JUDGE PAINTER: Well, I tend to agree, Mr. Hecht, because this is something that occurred after the 23rd. We had a little colloquy on the record this morning to the effect that Mr. Levie it would be reversible error to prevent Lloyd, Carr from showing that it was in compliance of the bookkeeping regulations after the 23rd.

Now, apparently Mr. Levie you are now hinging part of your case upon the events that occurred after the 23rd, is that right?

MR. LEVIE: Yes, Your Honor. I think --

JUDGE PAINT[illegible]nd this is information that has come to you as a clear violation of the Act, and is not a matter of investigation. Matters brought to your attention by the Respondent?

MR. LEVIE: It obviously has come to our attention during the course of this hearing, and my position is it has proper relevancy. It bears on the fitness of Lloyd, Carr & Co.

JUDGE PAINTER: Take five minutes on Canada and then --

MR. HECHT: Your Honor, I'm going to say -- you know, they wanted an expedited proceeding here. I'm not going to comment on the propriety of the proceeding, but what they're doing -- you don't bring an expedited proceeding which I think violated due process, and then conduct an investigation in the middle of this expedited proceeding.

If, in fact, the Staff didn't have a case when they brought this Complaint then that should rest. If in fact they -- look, he's admitted they're still selling options. Their arrangements with London and what they do to protect -- oh, their arrangements with London is not a scope of this inquiry, and they have had problems in the past as have other retail dealers have had serious problems in the past because the Division of Enforcement, we'll bring out in our rebuttal case, has in effect called these people up clients of Lloyd, Carr & Co. and other people in the industry, and they say "look, the CFTC is putting such heat on us that we, you know, go get someone else to handle the transaction."

And that's what Mr. Levie is driving at. I don't think it's proper in a proceeding. I don't even think it's proper outside a proceeding.

JUDGE PAINTER: Mr. Hecht, I can sympathize with your position, but the fact is that I made a ruling this morning at the request of Mr. Levie who felt concerned that your rights, your due process rights, would be jeopardized if we prevented you from showing that your books and records were in good order after the 23rd.

Now, --

MR. HECHT: Your Honor --

JUDGE PAINTER: That was the reason Mr. Levie asked me to suspend the earlier ruling in which I wanted to hear no evidence on the events after the 23rd of February.

MR. HECHT: I think he miscontrued your prior ruling. I think that had to do with certain subpoenaed documents, and that's what started it. We agreed on that amongst ourselves with respect to the subpoenaed documents, and how it wound up in this web I don't know.

JUDGE PAINTER: Well, it wound up in this web in the sense that if you perfected your documents and got them -- got your books and records in order after the 23rd Mr. Levie felt that to protect your rights I should not prevent you from bringing those in, and admitting them in evidence.

MR. HECHT: Okay, but when we supplied most of them he wanted to Mr. Levie I --

JUDGE PAINTER: I do not believe that the matter Mr. Levie is bringing up now is relevant to this proceeding, but I am going to give him four more minutes to question Mr. Carr on this issue.

MR. HECHT: Okay.

Your Honor, can I say one thing, and maybe we can clear the air because it's getting to be a very confused state of affairs.

When you say get the books and records up to date that I don't think is a proper statement. There's no evidence on the record that they weren't current or proper. The problem in this case from day one has been what books and records, and if we don't know what books and records have to be current you place us in an impossible position.

JUDGE PAINTER: Let me make myself clear.

I make the adverse inference that the books and records are not in accord with the regulations when you tell me that Miss Chan cannot see these books when I ordered you to see them.

You told me that you would not permit Miss Chan to inspect those books and records last week. My inference --

MR. HECHT: Not exactly. Not exactly --

JUDGE PAINTER: My inference, Mr. Hecht, is that the books and records were not in order, and that is a clear inference I make.

Now, I am not the final decider in this case.

MR. HECHT: Okay, but now that it's on the record, your inference, I think I should point out that what I said was we had no objection if we could suitable protections from the Federal Court, because in order to --

JUDGE PAINTER: I told you I wasn't a scintilla concerned by the Federal Court order, and if you wanted to get a Court order to prevent Miss Chan from going there that's your problem, not mine.

MR. HECHT: The appropriate procedure is a subpoena. And then we decline the subpoena and then you bring in a subpoena enforcement action.

JUDGE PAINTER: Mr. --

MR. HECHT: I mean, here we are in the middle of a hearing, Your Honor, my feeling, all of a suddent a Staff inspection; and we have had, and I think it's been documented, good grounds --

JUDGE PAINTER: Mr. Hecht, I really hate to argue over the matters. I made the ruling it was proper for Miss Chan to see those records at my order.

MR. HECHT: Well, as to two of them, and I will let you know now because this may save a lot of your examination, with respect to the cash receipts and cash disbursements the bookkeeper who has it couldn't get them produced in time, and at about four o'clock we can walk over there on one -- if I am there in the room and I make sure that no names are taken out, and she's free to look at them rather than getting them xeroxed. They're there, the originals to look at and we can xerox them from there.

JUDGE PAINTER: Let's move on with the examination of Mr. Carr.

I'm going to give you four more minutes on Canada. You may even ask your client not to answer. That's your business, Mr. Hecht, but Mr. Levie you may proceed with the examination of the Witness. I'm going to give you four minutes on Canada, and then we're going to get back to the issues that are set out clearly in the Complaint.

Q (By Mr. Levie) While the records of Lloyd, Carr of Canada, Mr. Carr, were in the possession of the Canadian authorities did Lloyd, Carr & Co. place orders for the purchase of commodity options?

A Yes.

Q With Lloyd, Carr of Canada?

A Yes.

Q Did Lloyd, Carr of Canada execute those orders?

A Yes.

Q In London?

A Yes. And we have confirmed telexes and all proper documentation of each execution as we always have.

Q So, the seizure of the books and records of Lloyd, Carr in Canada in no way affected the placement of orders of option orders in London on behalf of Lloyd, Carr & Co. customers?

A That's correct. And in addition to that the Commission indicated that they had no concern with the orders Lloyd, Carr Canada was placing for Lloyd, Carr & Company. It was only concerned with the number of options -- their investigation only covered the options that had been sold by Lloyd, Carr of Canada, Limited to Canadian citizens.

Q Your use of the word Commission, you're referring to Canadian authorities, correct?

A The Quebec Securities Commission.

Q Now, Mr. Carr, Division's Exhibit 15(a) through (x) in evidence; Exhibits 18(a) through (f) marked for identification; 20(a) through (h) marked for identification: 21(a) through (w) marked for identification; 22(a) through (aa) for identification. I would ask you, sir, if those five group exhibits represent all option orders placed by Lloyd, Carr & Co. of Boston between January 17 and February 23?

MR. HECHT: Objection to the form of the question as do you know as a matter -- in that way. I think you should state it in such a way because that's an impossible job to check over in half -- one hour and a half.

JUDGE PAINTER: Mr. Hecht, the subpoena was issued some time ago. Remember, your client produced these documents and I think he's either questioning the veracity of the documents he produced, or what is the problem?

MR. HECHT: Your Honor, I just want to point that we worked out the subpoena thing. The next day those forms were here that you're talking about, the next day they were here, or that day.

But go on from there. I just object to the form of the question.

JUDGE PAINTER: Can you answer the question, Mr. Carr?

THE WITNESS: Yes, I can answer it, Your Honor.

These are substantially the -- these substantially represent the sales made during that period of time. They are not -- this pack that I have in front of me is not complete. Now, the reason for that is that we're in business and we're doing business every day. Options are being exercised. Money is being received from the clearing broker. Customers are being paid their profits, and those that are missing are in use, Your Honor.

They're in daily use. Some are used now. Some were being used yesterday.

JUDGE PAINTER: That's the answer, Mr. Levie. Let's

Q (By Mr. Levie) The -- your testimony is then that records for options ordered between January 17 and February 23 are still in use and therefore may not be in those five group exhibits?

A That's exactly true.

MR. LEVIE: For the record, Your Honor, I reiterate all former objections as to these documents, and now note the obvious omission of some, and I think we're then left with the question of subpoena compliance with the remainder of --

JUDGE PAINTER: Yes, I want you to finish with the Witness right now.

That's clear for the record, Mr. Levie. He was ordered to produce. This is what you have. Now, the inferences may be made then by the body that will make the decision in this case.

MR. HECHT: Your Honor, just one quick notation for the record.

The option purchase journal has been furnished to the Division of Enforcement with everything but the names of the persons.

JUDGE PAINTER: Off the record.

(Discussion off the record.)

JUDGE PAINTER: On the record.

MR. LEVIE: Your Honor, I would move into evidence at this time Division's Exhibit's-- Group Exhibits 18, 20, 21 and 22.

MR. HECHT: Let me take a look at them, Your Honor, before they go in.

MR. LEVIE: And while Mr. Hecht is examining those I'll hand Mr. Carr Division Exhibit 33 for identification.

JUDGE PAINTER: Off the record.

(Discussion off the record.)

JUDGE PAINTER: On the record.

Any objections, Mr. Hecht?

MR. HECHT: No objections as to their admissibility.

JUDGE PAINTER: Those documents are admitted into the record.

(The documenta heretoforemarekd Division Exhibits 18, 20, 21 and 22 for identification were received in evidence.)

MR. LEVIE: My understanding being that 18 and 15 were previously admitted.

JUDGE PAINTER: Correct.

Q (By Mr. Levie) Mr. Carr, you have in front of you Division Exhibit 33 for identification.

MR. HECHT: Would you identify what that document is?

Q (By Mr. Levie) Mr. Carr, would you be so kind?

A Would I be so kind?

Q As to identify that exhibit?

JUDGE PAINTER: Have you ever seen anything like that before, Mr. Garr?

MR. WITNESS: I don't know if I've seen --

JUDGE PAINTER: Your attorney produced it, Mr. Carr.

MR. HECHT: It happens to be the options purchase journal which was photostated by the company with the names excised out. I believe that's what it is.

THE WITNESS: Okay.

JUDGE PAINTER: Tell us what it is?

MR. HECHT: You can say this is what a copy of the options --

JUDGE PAINTER: Tell us what it is?

MR.HECHT: Well, in that form -- it's not kept in that form in the office.

THE IWTNESS: I don't deal with this. I don't have occasion to look at the original of what this represents.

Q (By Mr. Levie) Mr. Carr, do you know when the original of Division Exhibit 33 was first prepared?

A No, I don't.

MR. LEVIE: Your Honor, then the only remaining items to be gone into are those remaining on the subpoena. Item 3, the cash journal; Item 4, the general ledger. Is it the Position of Respondents that the Exhibit 33 represents the sales journal?

JUDGE PAINTER: What are you contending on that, Mr. Hecht?

MR. HECHT: I don't understand -- this is one of the problems we've had. All we know is from the Complaint what documents they may be interested in. What do they mean by a cash journal? Cash receipts or cash disbursements?

JUDGE PAINTER: Now, Mr. Hecht, you brought over the original book --

MR. HECHT: That's an order purchase book, right.

JUDGE PAINTER: Well, the Witness here is unable to even identify this photostatic copy.

(The document above-referred to wsa marked Division Exhibit No. 33 for identification.)

MR. HECHT: Your Honor, he's the president. You have a back office in a brokerage house. You have -- you gave him a whole book bound. When you see the journal and it has a caption on it, yes. But his job is running the company, and there's a back office that sets up these and that's how it works, and --

JUDGE PAINTER: Then maybe you better bring one of the back office people over here that can tell us under oath and on the record what this represents. Otherwise it's worthless.

MR. HECHT: Your Honor, we brought it over here. You compare the original --

JUDGE PAINTER: Yes, Mr. Hecht, but we want a man up here verifying under oath what this proposed exhibit represents.

MR. HECHT: I think Miss Chan --

JUDGE PAINTER: Stipulate, if you care to?

MR. HECHT: I have. We said -- we gave it in as the options purchase journal when we put it in evidence.

JUDGE PAINTER: Mr. Levie, you'll stipulate?

MR. LEVIE: No, Your Honor.

MR. HECHT: I believe that's an options purchase journal.

MR. LEVIE: The question is when was it first prepared.

MR. HECHT: I'm not objecting. It's just --

JUDGE PAINTER: Mr. Carr, who was the party who prepared this, or do you know? Whose handwriting is it?

THE WITNESS: I don't, Your Honor.

JUDGE PAINTER: Mr. Hecht, I'm going to ask you to bring over, find out, who created this book. Who prepared it and willing to testify as to when.

MR. HECHT: Your Honor, I -- I strongly object to the inference who created the book, It's based upon --

JUDGE PAINTER: Well, Mr. -- please don't make -- I'm saying this book came into being at someone's hand. It's apparently a strange object to Mr. Carr. He's unable to recognize what it is.

MR. HECHT: The point is who gave it to him -- Your Honor, when you have a journal book --

JUDGE PAINTER: Mr. Hecht, all I want to know is who made the entries in this book and when?

MR. HECHT: We'll find out. He'll go back and ask. I mean there's a number of people in the back --

JUDGE PAINTER: At the next break call over there and find out who makes the entries in this book.

MR. HECHT: Or if it was more than one party.

JUDGE PAINTER: Mr. Levie.

MR. LEVIE: Your Honor, from the position of the Division's case I'm satisfied obviously with the answer Mr. Carr gave. I'm not asking that anybody be brought in to further authenticate that because I submit that -- well --

JUDGE PAINTER: I thought you had some interest in when this came into being?

MR. LEVIE: I do, Your Honor, but they have the obligation of showing fitness. Fitness bears on when that first was kept. I don't care when it was started, but they have to prove when it was started.

MR. HECHT: You know, Your Honor, I've heard of all things in a democracy. This is the only agency that brings a proceeding that not only gives you a chance not to defend. It says that you must be guilty and prove your innocence.

JUDGE PAINTER: Let's move on with what other questions you have of Mr. Carr.

Q (By Mr. Levie) Mr. Carr, have you brought with you a general ledger including customer free credit balances and supporting documents?

A I don't know.

MR. HECHT: Read the question again?

Q (By Mr. Levie) Mr. Carr, have you brought with you general ledger including customer free credit balances and supporting documents?

MR. HECHT: Well, pursuant to the subpoena and I can answer --

JUDGE PAINTER: I'd rather have the Witness answer if he can. Make your objections, Mr. Hecht.

MR. HECHT: Counsel have worked out a stipulation. We have gone over these items 85 times.

Answer the question as best you can, if you can?

THE IWTNESS: I don't know what books and records we have brought here, Mr. Levie.

Or what arrangements you made with our counsel for what books and records.

MR. LEVIE: Your Honor, then until any books and records are produced there would be no further questions at this point regarding subpoena compliance.

JUDGE PAINTER: You're through with this Witness?

MR. LEVIE: Correct.

JUDGE PAINTER: Are you through with the Witness on subpoena compliance?

MR. LEVIE: As far as I can go, yes Your HOnor.

JUDGE PAINTER: Very well.

MR. HECHT: Your Honor, I want to make it clear, and it's on the record, we adjourn this hearing arrangements have been made for Miss Chan with me there under your order to --

JUDGE PAINTER: Not under my order today.

MR. HECHT: Okay.

We have made voluntarily, then, an offer for Miss Chan herself to come over and look at certain documents this afternoon, because they can't be reproduced, and the cash receipts and cash disbursements -- cash disbursements will keep you busy for awhile. She can look at them, and then we're going to try, because the reproduction they're long sheets and they have got to be taken out. So, she can write up her notes. We will then reproduce what she then deems appropriate.

JUDGE PAINTER: Mr. Levie, do you have more questions other than on the books and records in subpoena compliance?

MR. LEVIE: No, Your Honor.

JUDGE PAINTER: You're finished.

MR. HECHT: I have some limited cross examination. I want to make it clear for the record I'm reserving my rights with respect to rebuttal, but there are certain matters I want to cover on cross that were raised on direct examination. I feel this would be the appropriate time.

CROSS EXAMINATION

Q (By Mr. Hecht) Mr. Carr, reference has been made during your direct examination to certain documents filed in the Second Circuit Court of Appeals, do you recall those documents?

A I know what the case is about.

Q Okay, and --

JUDGE PAINTER: Could we go off the record again?

(Discussion off the record.)

JUDGE PAINTER: On the record.

MR. HECHT: Your Honor, I'm going to withdraw that question because it really goes more to our rebuttal case, that whole line.

Q (By Mr. Hecht) Mr. Carr, do you recall or can you identify Miss Chan?

A Yes.

Q And do you recall when you first met her?

A I think it was the 20th of January this year.

Q Now, do you know who Jack Cosulich is of your office?

A Cosulich, yes.

Q How do you spell that?

A C-o-s-u-l-i-c-h.

Q And at your request was he sent down to New York to view the regulations litigation?

A Yes.

Q And on -- do you recall in connection with that litigation -- did you receive a call from him or me relating to the fact that the General Counsel had taken the position, that Lloyd, Carr had never filed with the CFTC as a FCM?

A Yes.

MR. LEVIE: Objection. I move to strike the answer as being hearsay from an unknown source. In order for hearsay to be admissible, which it is, there must be some basis for crediting it. This way we're playing multiple choice as to who may have said it with this Witness.

JUDGE PAINTER: I believe the Witness is testifying about a conversation he had with a member of the General Counsel's office?

MR. LEVIE: No.

MR. HECHT: No, either with me or Mr. Cosulich. I'll ask him.

Q (By Mr. Hecht) Do you recall who it was?

JUDGE PAINTER: Well, he may testify as to the conversations he had. I'd like him to identify the party he had them with.

Q (By Mr. Hecht) Do you recall if it was me or Mr. Cosulich?

A It was Mr. -- the conversation I received a phone call from Cosulich at the Courthouse, and he told me that they said we never had filed.

Q And thereafter was it made clear to the CFTC that you had filed?

A Then you spoke to me on that. And we looked for the papers that indicated, that proved that we had filed.

Q And did I call you at home or at the office?

A You called me at the office.

Q And did you search your files for the application?

A Yes.

Q And did you find a copy of your application?

A We found the original that had been returned to us.

Q Okay, and did you find any letters with that application? And in particular that letter dated October 12? I believe it's one of the Division Exhibits?

A No, I think you're referring to a copy of the deficiency letter that Mr. Levie showed me. One that you had sent me. There was none. We did not get a copy of that deficiency letter from the agency.

Q And do you remember looking at that exhibit --

MR. LEVIE: I think he's showing him Division Exhibit 10, for the record.

Q (By Mr. Hecht) Division Exhibit 10. There's a handwritten note up top. Is that your writing up top?

A I don't think so.

Q Does that look like the writing of anyone in your office?

A Hard to say.

Q You don't know whose writing it is?

A I do not.

MR. LEVIE: I'm prepared to represent to the Court whose writing it is at whatever time --

JUDGE PAINTER: State it now?

MR. LEVIE: Your HOnor, this afternoon we found out that the handwriting in the upper right hand corner of Division Exhibit 10 is that of Peter Shiner of the Commission's Washington office. It was made following a conversation Mr. Shiner had with Mr. Carr at which time Mr. Carr told Mr. Shiner that he had received no deficiency letter. Mr. Shiner then made those notes on the original or the copy of Division Exhibit 10 which Shiner had.

Q (By Mr. Hecht) And do you recall Mr. Cosulich stating to you with respect to that Court appearance what arrangements or what representations had been made to the Court about the processing of Lloyd, Carr's application?

A What representations did he tell me were made by the agency?

Q Right. To the Court?

A I don't know what you're referring to.

Q Okay, do you recall applying for a stay with the SEcond Circuit Court of Appeals with respect to these regulations in January?

A Yes.

Q And do you recall being advised as to what the disposition was as to Lloyd, Carr?

A We did not get the stay, but I think somewhere in there I know that Cosulich told me when -- that the Court directed them to process our application quickly or on an expedited basis.

Q Okay, and did you subsequently receive a call from a Mr. McCarthy or someone at the audit division of the CFTC?

A I first called McCarthy. I had earlier had called Mr. Loehr, I think on the 17th, and asked if he had received our FCM application. Excuse me, on the 17th Loehr was not in. I called him on January 18, again, and he said yes he had it, and he passed it on. And they -- we had -- we had passed fitness and suitability by virtue -- in corollary to our CTA approval. The only thing remaining is that it pass through the auditing department. And I said who would that be, and he indicated that it was Mr. McCarthy.

Q Okay, and did you --

A I called McCarthy. We're talking now about the afternoon of January 18, which was a Tuesday.

Q And did you subsequently make arrangements with Mr. McCarthy to have members of his staff come up to Lloyd, Carr?

A Well, first he said he wasnt' -- I don't remember, Mr. Hecht, whether it was Mr. McCarthy or he referred me to Mr. O'Brien in Washington.

Q Were you -- were arrangements made on the 18th to have people --

A No, no. On the 18th first it was indicated that they were not certain that a pre-registration audit was going to be made. They couldn't represent that it had to be made or when it was to be made, but that someone would get back to me. I think it was Mr. McCarthy but it could have been Mr. O'Brien.

Nevertheless, I received a phone call a couple of hours later, and I think it was Mr. McCarthy and he said "yes, we will have to do a pre-registration audit to confirm the financial statement that accompanied the application this time that it was resubmitted."

"We'd like to come up there Thursday morning", that would be the 20th. I said "okay." And then he volunteered the following. We'd like to -- or we would like to do it tomorrow, but I just can't get my people together or rearrange their schedule for it. So, we'll make it Thursday.

Well, I pleased enough with Thursday so that was tne end of that. I said "fine."

Q During that conversation did Mr. McCarthy tell you what in particular his audit staff was interested in?

A Yes, he did, as a matter of fact. When he told me that they would have to do the audit which he initially wasn't sure of he said to do -- he said "I don't see any problem here from this FR-1 form, but we need to confirm that you meet the minimum capital requirements."

Q Did Mr. McCarthy ever give you a list of what books and records were required as commodity option dealers?

A No, never mentioned a word.

Q Did anyone from the audit staff to date mention to you what books and records were required?

A No.

Q And did you attempt to ask him what books and records were required?

A No.

Q Who is Frank Defazzio?

A He was a bookkeeper that we hired sometime I think in January, early January or late December.

Q And what was his background?

A He had been a bookkeeper in brokerage house, stock brokerage house.

Q And was it your understanding that he was experienced in setting up books for a brokerage house?

A Yes.

Q And why did you decide to obtain a bookkeeper who had brokerage house experience?

A Well, I figured that everywhere up and down the line we had to train the people to do what we needed. This was an area where we were going to let him tell us what was needed. We would use his help and his experience in getting, you know, the proper bookkeeping accomplished.

Q And for how long was Mr. Defazzio with your organization?

A Three weeks, perhaps.

Q And during that three week period was he able to come in and work every day?

A No, he missed a number of days.

Q And could you tell the tribunal why?

A Well, one day he went home at one thirty. He said he ate something that disagreed with him for lunch. And the next day he couldn't come in because he was home sick. The following day he came in around two o'clock in the afternoon.

Q Was there any illness in his family during that period?

A No, but a couple of days later on a Monday morning he didn't show up and I called and he was crying hysterical that his mother had just had a stroke and she was in the Mass. General Hospital and that really was the last we ever heard of him. Someone told me that they had read in the newspaper that she had died.

Q And then did you immediately go out and try and hire another bookkeeper?

A Well, we did.

Q And at the present time how many people do you have working in the back office?

A Four.

Q And prior to January 1 how many people did you have in the back office?

A I don't think I had any.

Q And at that time was Lloyd, Carr considered a small company compared to what it is now?

A Yes. Yes.

Q And do you recall -- have you hired any other persons who were experienced in this kind of record keeping? Stock brokerage record keeping?

A I think we have a girl now who -- I'm not sure what -- I'm not sure what the backgrounds are.

Q Now, during that period --

A I might add that we are interviewing, if I'm allowed to say this. We are interviewing new rather high priced controllers who have current brokerage house experience.

Q And the reason which you're relying on people with brokerage house experience is because you got no guidance from the CFTC as to what records are required?

A That's one of the reasons.

Q What are the other reasons?

A Well, again, we feel that with the business the size it is now it can't be handled by just a number of girls. I think we need one man overall or one individual overall who can see that everything is kept as it should be.

Q Okay, now with respect to the associated person's application, do you remember there was some testimony or questions asked you by Mr. Levie about the check with the original application, and that is, according to him it was bounced?

A Yes.

Q Would you state for the tribunal what happened between you and the Greenwich bank during that period?

A When we opened the Greenwich office we opened an account at the Union Trust Company on Putnam Avenue in Greenwich. Which was used as a depository for funds that came to that branch from the customer. At the time we were buying options, not through Canada, we were still able to buy direct from Rudolf Wolfe in London. So, funds for the purchase of options for the Connecticut office were sent directly from that bank to London.

We had on deposit some time in January there, I think by this time, about -- upwards of $140,000 in that account. And I received a telephone call one day from a Mr. Carson who started to talk unlike any banker I ever heard. He said "you fellows, I understand, are involved in a telephone operation." I said "so is Merrill Lynch."

And he said "well, you're selling options on commodities." I said "yes." And he said "it's my opinion that that is a type of investment vehicle that should be offered only to industry and not to any individuals." I said "first of all, Mr. Carson, it isn't any of your business and secondly you're unqualified to judge. What's the bottom line here?"

He said "well," he said "I don't think we can handle your account anymore." I said "really? Why"? He said "well, I also understand that you're not registered." I indicated there was a question concerning our registration and that we were in several courts on it, and he said "well, I had a phone call from the CFTC and you're selling illegally. And they said if we permitted you to keep your account here that we would be aiding and abetting a criminal act."

I said "then I'll tell you what, Mr. Carson, don't sweat it. Just send us a cashier's check for the balance and we'll be happy to close the account."

He said "no, I'm not going to do that." He said "we're going to put a two week clearance on every one of your deposits and as the funds become available we will release them to you."

I indicated that the bulk of the checks in the account were either local checks or from Connecticut and that if the Federal Reserve source say to give it a four day clearance why did he decide on two weeks? We went around and around, and the bank as I understand is currently under investigation from the State Banking Commission for withholding our funds, which we eventually did get.

Q And did you ask someone to confirm what Mr. Carson had told you?

A I was a little disturbed about the $142,000 that belonged to the firm and I called you, Mr. Hecht.

Q And were you subsequently advised --

A And you indicated to me that you had a conversation with Mr. Carson who confirmed the whole thing that he had told me.

Q Now, with respect to the --

JUDGE PAINTER: Off the record.

(Discussion off the record.)

JUDGE PAINTER: On the record.

THE WITNESS: I might add, Mr. Hecht, that at the time we were negotiating for some additional space in the Town of Greenwich, and we were -- those negotiations were stopped abruptly by the real estate agent who said he had had a call from Mr. Carson. That they're not going to rent space to any company that is selling illegally.

Q (By Mr. Hecht) Now, prior to this week were you aware of any other company whose employee's applications were not being processed for AP status?

A Other companies -- applications from employees of other companies have been regularly processed much more quickly than applications of our own people.

Q And how do you know this?

A Because included in the 38 brokers whose applications we sent in on or about the weekend of the 14th to the 17th two left us or we let two go, I should say. They went to work for First Boston who's a firm down the street here who's been the subject of a consent decree for fraud and misstatements and writing naked options and everything else, and almost as soon as they went to work for the other company they received -- two of those 38 applications were theirs, and they received -- well, one of them I should say that I know of, and I got it from Mr. Boole. His application was approved over the phone two weeks before any of the other 36 applications which we had sent in for people that were still working for me.

Which came as a result of his filing a form indicating that he had changed his employer.

Q Now, with respect to this customer's -- special customer's account that you have set up?

A Yes.

Q Mr. Levie asked you on direct examination. Do you know of any rule or regulation of the CFTC that required you to set that up?

A No.

Q And why did you set that up?

A I set it up because as -- just around December that we really started -- our sales really started to increase, and we felt that it was a much better way -- you know, if you take customer's money and deposit it in your operating account and you write a check for the rent it would be very difficult to determine how much money in that account belongs to a customer and how much you can use. Whereas, if you put it in a separate account and it's segregated for the benefit of the client and only transfer funds into your operating account then you know whatever money is in the operating account is yours and you can use it to pay obligations.

So, obviously, it was for the protection of the customer's assets.

Q If so requested by the CFTC when your company's done processing orders relating to the purchases between the January 17 and the 23rd of February will you voluntarily furnish the Staff copies of those documents?

MR. LEVIE: Objection. Hypothetical and conjecture.

JUDGE PAINTER: Restate the question again?

Q (By Mr. Hecht) Okay. After you complete processing of those eight part forms that relate to transactions now in progress that relate to purchases of options after January 17 and before February 23, if you're so requested by the Staff will you furnish them photostatic copies, less the names?

A Yes.

Q Now, with respect to Canada, is that a partnership or a corporation?

A A corporation.

Q And what percentage of the stock do you own?

A Forty percent.

Q And who are the other stockholders?

A Mr. Le Mieux owns 60.

Q Is it -- and did Canada ever charge you fees for acting as a clearing broker, intermediary with respect to --

A No.

Q Nothing additional was charged to the customers?

A No, it was not.

Q Now, when Miss Chan was up in Boston did she say anything to you about the status of your customer records?

A She said they were complete and excellent.

Q And to your knowledge did your staff or employees furnish complete cooperation to Miss Chan?

A They did.

Q And did you attempt to obtain from Miss Chan a list of what she felt were the recommended books you had to keep?

A No, I didn't.

Q Okay, did you discuss this with your accountant?

A What --

Q At that time?

A -- books were required to be kept?

Q Correct?

A No, I did not.

Q Did you assume he had discussed it with Miss Chan?

MR. LEVIE: Objection as to his assumption, Your Honor. I would move that the answer be stricken since something was answered there.

JUDGE PAINTER: He said he did not discuss it with his bookkeeper or did I miss a question?

MR. LEVIE: I don't know what the record will show, but Mr. Carr did get out an answer during the course of my objection. I don't know if the record picked it up.

JUDGE PAINTER: Off the record.

(Question played back.)

JUDGE PAINTER: On the record.

Q (By Mr. Hecht) During Miss Chan's visit did you have an accounting firm present on the premises of Lloyd, Carr?

A Yes.

Q And did you see them engaging in discussions with Miss Chan?

A Almost continuously.

Q And were you privy to all those discussions?

A No.

Q Were you privy to some of those discussions?

A Yes.

Q And during that audit did Miss Chan advise you that

Lloyd, Carr satisfied the minimum financial requirements?

A Yes, she did.

Q And what else did she say about her audit up there with respect to the FCM application of Lloyd, Carr?

A Well, the big question, of course, was when. When will we be registered, and she said "well, why don't you call -- call Mr. McCarthy Monday morning at ten o'clock and get the good news."

Q And by good news did she tell you specifically that as far as she was concerned you satisfied the requirements for an FCM?

A She said all along we met the minimum capital requirements, and there had been some questions between her and the accountant during which I was present. There -- they had all been resolved to her satisfaction.

Q Do you recall participating in a discussion where they wanted to disallow a substantial amount in the Greenwich account because it was in the name of Lloyd, Carr & Company spelled out rather than Lloyd, Carr & Co.?

A That was an excuse they gave me on Tuesday and Wednesday when they started to try and get Enforcement involved in it.

They told me they were disallowing a hundred and some odd thousand dollars that was in the Union Trust account in Greenwich because, of all things, the word Lloyd, Carr & Company instead of being C-O, abbreviated it was C-o-m-p-a-n-y. So, they were not going to allow a hundred and some odd thousand dollars worth of cash.

Q And as a result did you subsequently call Mr. O'Brien or speak with Mr. O'Brien down in Washington?

A Well, I spoke to O'Brien because McCarthy started double talking me now. I was told to call him at ten o'clock in the morning. I had asked Miss Chan, I said "look, how about 9:30?" Because then the London markets are still open. We had not -- we had sort of held back purchasing most of the options pending our registration, and I certainly wanted to get them -- because we had been told all along through the course of the audit and we knew we met the minimum financial requirements. We had been told on the 18th that we had passed fitness and suitability.

So, we felt it was a question of momentarily being granted registration. Miss Chan confirmed that to us when she left. So, I said "how about 9:30" which would have been 2:30 in London and we could still get the orders in.

So, she said "I will give this to Mr. McCarthy at nine o'clock in the morning and call, you know, as soon thereafter as you think maybe he's had a chance to look at it."

Q And did you call Mr. McCarthy on Monday morning?

A So, I called McCarthy. Now I started to get double-talk: "Maybe you should change the name of this bank account or that bank account from Lloyd, Carr Financial or, but I don't know. Let me send all this on to Mr. O'Brien in Washington". "When will he have it?" "Oh, he should have it tomorrow."

So, tomorrow was Tuesday which would be the 25th and I got a hold of O'Brien and O'Brien wanted some additional letters about -- oh, then he told me to change the name on the bank account and to get him a copy of the letters to the two banks -- to the one bank where the name was Lloyd, Carr Financial and a copy of the letter to the other bank telling them the company should not be spelled out. It should be abbreviated C-o period. And a letter to Rudolf Wolfe. Our account with them was in the name of Lloyd, Carr Financial telling them to change the name to Lloyd, Carr & Co.

So, I sent out all those letters. Sent people down to Greenwich to get a letter where the Greenwich bank signed "okay, we'll do it."

Sent somebody over to US Trust to pick up a letter from them, "yes, they're changing the name on the account."

And had London, Rudolf Wolfe, send me a telex that they would do it. I got all this to McCarthy within a couple of hours. Planes were going back and forth with all these papers.

Anyway, still O'Brien wasn't satisfied anymore. Now, I sensed that no matter what I did there was going to be -- I was not going to be satisfied with the result. I called Mr. O'Brien and I asked him, "are you satisfied with the documentation?"

He said "well, we have to confirm it ourselves." I said "when?" He said "we'll try to do it by tomorrow morning." We're now going into Wednesday.

Q Now, during this period was there any reference made in your conversations with these people that the Division of Enforcement was interested?

A No, not yet. Nor did they mention any books and records or anything. It was just a question of minimum financial requirements, and changing the names and the titles and so on.

So, Wednesday morning, to pick up the trail behind O'Brien to see where he was at, I called both banks and I called Rudolf Wolfe in London and I found out that he had spoken -- his department or someone in his department had spoken to each of these people and places and had confirmed that the letters had been received and had been accepted, and that they had been notified that the changes they wanted had been made.

Now, I got back to O'Brien and O'Brien says to me, this is maybe 11:30, and he says "well, we'd like to come back and do another audit. There's a question of the two names."

I said "okay, Mr. O'Brien, when?" And he said "well, I don't think we can do it this afternoon. How about tomorrow morning?" I said "okay."

And he said "we'd like to bring a couple of people from Enforcement in with us." I said "no." I said "is there a violation?" He says "no, they're interested in seeing it." I said "well, I want to know why". And he said "look, I don't have anybody up here now. I'm talking to you alone." He said "I will tell you this. It's not my doing." He said "I don't want to say who's making me do it, but it's not my doing. I'm satisfied."

Q And by satisfied it meant that his -- what did you think he meant by satisfied?

A In the content --

MR.LEVIE: Objection.

His understanding of Mr. O'Brien's use of satisfied is irrelevant.

JUDGE PAINTER: He said Mr. O'Brien used that word and he said it and he's capable of testifying as to what Mr. O'Brien said.

MR. LEVIE: I --he was asked what he understood Mr.

O'Brien meant by satisfied. That's my objection.

JUDGE PAINTER: I'm not going to require him to give me a verbatim recitation of what Mr. O'Brien did say. To the best of his recollection he's going to tell me what Mr. O'Brien said. And if he says that O'Brien meant that he was satisfied that's fair enough with me.

Q (By Mr. Hecht) What happened next?

A He said "now, are you going to let us come back or not?" I said "I told you no." He said "well --" oh, I said to him "I don't care what the answer is no." And he laughed a little and said "I'll make believe I didn't hear that, Mr. Carr."' He said "why don't you think it over or discuss it with counsel and get back to me."

I said "okay, Mr. O'Brien, I'll get back to you by 1:20." And I got a hold of Mr. Hecht and he said -- I said "Mr. Hecht would like to talk to you and whoever is advising you." He said "all right, why dont we -- I'll get the enforcement attorneys up here and why don't you set up a conference call."

So, --

Q Is that the conference call you're referring to now that you testified to on direct?

A That conference call took place at about 3:30 or 3:40 that afternoon.

Q And would you state for the Court what your recollection is of what -- who was in the conference call and what they said?

A And by the time I got the telephone working and all the right buttons pushed so that everybody could talk to everybody else, I only knew Mr. O'Brien on the other end. And I said "Mr. O'Brien, this is Charlie Hecht." Charlie said "hello, Mr. O'Brien." Mr. O'Brien said "I have here with me Mike Stewart." Charlie said "hello, Mike." Mike said "hello, Charlie." He said "I have Dick Levie and Ed Lyon here."

Okay, first thing out of -- next Mike Stewart said "have you decided whether you're going to let us come up or not?" And Charlie said "I can understand the auditors coming up if they want another look at the books and that's acceptable. I don't see what enforcement has -- what their involvement is here."

And Mike Stewart said, and I well remember the tone of his voice, he said "they don't have to come up there, Charlie, they're satisfied." He said, "but for the fact we have told them not to register you you would be registered. Now, are you going to let us come up or not?"

And Mr. Hecht, he said, "Well --" he mentioned the Brigadoon case, and he said "I don't think that you have the right to come up from enforcement until we are registered." And Stewart said, "am I taking that then that then that you're not going to allow us to come up."

The two agreed that that was what Mr. Hecht meant. Now, I got into the conversation and I said to him, "Mr. Stewart, you're -- are you telling me that you have the right to hold up registration without even probable cause for thinking there's a reason for enforcement to get involved."

Mr. Stewart said "yes, I can hold it up and I am." And I then said to him, I said "well suppose" -- he said "it's only that you won't let enforcement, and I'm enforcement, come up and see your records."

I said -- oh, then Charlie said "look, register us and then you will be able to come up any time. It's in the regulations."

Stewart said "Hecht"-- he said "Charlie", to Mr. Hecht, "if you will give me your word that you will let us get on a plane and come up there tomorrow morning I will let your registration proceed as of now."

So, I said "suppose Mr. Stewart you come up and you believe that you have found that we are selling options as of this date and have been doing it since the 17th. Will you then use that as an excuse not to register us?"

And he said "no, I won't. I would then sue you, but I would not hold up your registration for that reason."

Again, I repeat, I have copious notes to substantiate this conversation, because it was on a speaker phone and there was a stenographer there.

Q And do you recall any discussion about another company's prior experience with the Division of Enforcement going on?

A Yes, I remember you telling them -- oh, I also remember that you made him an offer. I think that if he wanted to -- oh, you said to him that if he wanted to check our records we would take all our transaction slips face down and let him pick out 15 of them at random and we'd give him those people, those 15 transactions.

And he could put his people on the phone and talk to each one of those guys.

Q Was that in another conversation or --

A My -- maybe it was. I thought it was in this one.

Q Okay, what was said about the fact of other company's experience with enforcement?

A You mentioned British American, and you said that they had come up -- or that's the reason you didn't want them to come up and see all of the records. You indicated that at one time enforcement was up on the premises of another company and that you went to the bathroom, and I remember Mike Stewart's comment was "well, you have the right to go to the bathroom", and you said "while I was there in the bathroom somebody whipped out a camera." You said it was like the CIA and took pictures of all the documents on the table, and then they went back and they tried to call all these people and instigate them into making complaints.

Q Did you --

A Then Stewart said "don't we have a right to call them and ask if they're satisfied with the way their transaction was handled?"

And you said "but that isn't what you said to them, Stewart. You said, 'why you doing business with these s.o.b's' " And then that conversation sort of finished.

Q Do you recall any conversation about working out with enforcement going into Federal Court to get suitable protection so they could come in and your business wouldn't be destroyed?

A You asked them -- you said "I'll let you come up if I go into Federal Court and ask -- providing there's something called an undertaking." I dont know what that means.

Q And what did Mr. Stewart say to that offer?

A "No way" he said "I never broke my word to you before, and you have no right to ask me for that."

Q And did you try to make any other offers to soothe their desires such as putting your customer names in escrow with me, pending registration?

A I offered to do that, yes. I said "look, we'll take those books and records and we'll give them to Mr. Hecht in escrow, and the moment we're registered you can have them all."

Q And what did he say to that?

A "No, no way."

Q And did Mr. Stewart in that conversation mention the possibility of criminal sanctions?

A Yes.

Q And do you recall what he said in respect to that?

A You said "hold it, just a minute." You said "there's prior litigation. They came in before this." You mentioned a few other things, and Stewart backed down, and he said "wait a minute, I'm not saying we're going to do it." And then the conversation again changed.

Q And did Mr. Stewart admit during that conversation that you passed all the requirements for an FCM?

A He said it on five different occasions. The most notable of which was when he said "they don't have to come back, Charlie. They're satisfied, but for the fact that you haven't let us come up there you would be registered now." "There's no question about their meeting the minimum capital requirement."

Q Do you recall any statement made by Mr. Stewart with respect to whether or not the Division of Enforcement received any customer complaints?

A I remember your telling him that there hasn't been a single customer complaint in all this time, and I don't remember -- his comment, I think, was that he didn't deny it, but I don't know that for sure.

Certainly, he did not say there -- no, he said "I know that."

JUDGE PAINTER: Could I interject one question.

On the question of customer complaints how was Edward Talbot's name brought up? Or why was he brought in to this hearing earlier?

THE IWTNESS: He was brought in the hearing because somehow or other Mr. Levie or one of his minions had obtained the name of Mr. Talbot. Mr. Talbot had called to find out if we were registered or not.

JUDGE PAINTER: Thank you. I recall.

THE WITNESS: And Mr. Talbot subsequently came to our premises and bought two more options.

JUDGE PAINTER: I recall, yes.

Thank you.

MR. HECHT: I have no further questions on cross examination, Your Honor. I reserve the right to call him on rebuttal.

JUDGE PAINTER: Thank you.

REDIRECT EXAMINATION

Q (By Mr. Levie) Mr. Carr, what did Mr. Cosulich tell you exactly he heard said at the oral argument before the Second Circuit?

A His exact words?

Q Yes, sir?

A I don't remember his words only their substance.

Q And his substance was that the Commission had represented to the Court of Appeals that "we had never filed"?

A Yes.

Q Who did you understand him to mean by "we"?

A Our company.

Q Which company?

A Which company?

Q Yes, sir.

A Lloyd, Carr.

Q Which Lloyd, Carr?

A You've showed me a letter three times that said we treated them both as the same. And you gave that then to the newspapers, also. They intermingled and they were in fact the one company.

Q When Mr. Cosulich said to you "they said we never filed", I'm asking you which Lloyd, Carr did you understand him to mean? Financial Co. or --

A I didn't even think about it, Mr. Levie.

Q We can agree that there was no application filed with the Commission in the name of Lloyd, Carr & Co. -- received by the Commission until January 25 of this year, correct?

MR. HECHT: I'm going to object because I think it's clear that everyone knew they were one and the same company, and I think it was done -- I think Mr. O'Brien testified at his request.

JUDGE PAINTER: It may not be clear to everyone that they were one and the same, but I think Mr. Levie is making the point that Lloyd, Carr Financial had filed at an earlier date than Lloyd, Carr & Co.

MR. HECHT: I don't think he did, Your Honor.

I think our position has been and the correspondence shows and the Commission documents show that this was an amended application. It was the same company and the same --

JUDGE PAINTER: Your position that it was one entity all the way through.

Go ahead, Mr. Levie.

Q (By Mr. Levie) Can I have a moment to regroup my thoughts. That question was unanswered, Your Honor.

Mr. Carr, I think we were discussing the fact that the application in the name of Lloyd, Carr & Co. was not received by the Commission until January 25, correct?

A I don't know when you received it. I know when it was dated.

Q When was the application made by Lloyd, Carr & Co. dated?

A January 24.

Q And that's the first time an application had been filed with the Commission for FCM registration in the name of Lloyd, Carr & Co., correct?

A That was an amended application of the one that went in on September 29.

Q Whether we call it amended or new it was the first one the Commission saw in the name of Lloyd, Carr & Co. as the applicant, correct?

A It was done at your request to make that change, and it's the first one with the changed name that you saw.

Q Thank you, sir. What did Mr. Cosulich tell you about the representations made with the expeditious processing of the application of Lloyd, Carr whichever?

A He indicated to me the Court had said something to the Commission about speeding up the -- or instructing them to process the application promptly.

Q Those were Mr. Cosulich's exact words to you or your recollection of the substance of what he said?

A My recollection of the substance of what he said.

Q And your recollection of the substance of his conversation with you would be considered accurate by you, correct?

A I would -- you mean accurate as to what was the substance of the conversation, yes.

Q Your memory is pretty accurate as to what he told you, correct?

A In this particular instance it is.

MR. HECHT: Your Honor, I'd like the record to note that this is the Division's Witness here, and they're cross examining their own Witness.

JUDGE PAINTER: I deem Mr. Carr to be somewhat hostile to the position Mr. Levie is taking in this proceeding. Therefore, we have permitted Mr. Levie to lead on frequent occasions.

MR. HECHT: Note my objection for the record.

JUDGE PAINTER: It's noted.

Q (By Mr. Levie) Mr. Carr, where did you hear that First Commodity had been selling naked options? Or First Boston, as you referred to it?

A Well, I'll tell you. We saw the charge and we saw the consent decree, and your very efficient public relations office sent it out to every individual on your mailing list of which we are one.

And we then sent someone -- Charles Le Mieux III went over to the Courthouse and saw all the documentation. And it indicated that First Boston did not have enough money, enough capital, on more than one occasion to meet the customer's equity.

Now, how do you have not enough money to meet customer's equity if you are in fact buying the options somewhere. Only if you're not buying the options and you're writing them yourself.

Q So, it was based on that analysis you concluded First Commodity had been charged with selling naked options, correct?

A Yes.

Q Let's discuss Mr. Carson for a few moments. Were they his exact words, Mr. Carr, that "you fellows, as I understand it, are involved in a telephone operation"?

A Yes.

Q And were they his exact words that "in my opinion selling options is the type of investment vehicle that should be offered only to industry"?

A Yes.

Q And were they his exact words "I don't think we can handle your account because I understand you're not registered"?

A And you're selling illegally.

Q They're his exact words, correct Mr. Carr?

A Ninety percent they are his exact words.

Q No question in your mind that you're 90% sure?

A I --

MR. HECHT: Objection to the point of the question.

JUDGE PAINTER: Sustained.

Q (By Mr. Levie) He told you "the CFTC told him you were selling illegally", correct?

A Yes.

Q Mr. CArson told you that he had been told by the CFTC that "if we permit you to keep your account here we would be aiding and abetting criminal violations," correct?

A Repeat the beginning of that?

Q That Mr. Carson told you "if we permit you to keep your account here we would be aiding and abetting criminal violations"?

A And he added that "we can't be in that position" right.

Q Those are his words? Not yours?

A Yes.

Q When did you have this conversation with Mr. Carson?

A I'd have to look at the bank statement to determine that accurately, but I believe that it was shortly -- it was maybe the third week in January.

Q And --

A Or perhaps -- sometime between the third week in January and the first week in February.

Q Did Mr. Hecht tell you what he and Mr. Carson discussed?

A Yes, he did.

Q What did Mr. Hecht tell you Carson had told Mr. Hecht?

A The same thing he told me. The same thing Carson told to me.

Q When Miss Chan was up at the premises of Lloyd, Carr Financial on January 20 and 21, were they her exact words that your customer records are "complete and excellent"?

A No, I don't think they were her exact words, although I don't remember. If I remembered I would give you the exact words.

Q So, that's just your best --

A To the best of my recollection this is exactly -- this is what she said.

Q She also told you that the firm was in apparent violation of 1.18, didn't she?

A No.

Q She never said that to you?

A No.

Q Did she ever say that in your presence to Mr. Winston or Mr. Rakity?

A No.

Q Specifically, what did Mr. Stewart say to you about criminal sanctions?

A Just three words about criminal implications, also. To that effect.

Q Would you elaborate on what you mean by three words, to that effect?

MR. HECHT: Objection, Your Honor.

That's exactly what he objected to when I asked the question as to what Mr.O'Brien meant as to satisfied?

JUDGE PAINTER: Sustained.

I think he's answered the question the best he can.

Q (By Mr. Levie) Did you tell Miss Chan on January 21 that your accountants would try and put together the necessary books and records?

MR. HECHT: Your Honor, objection. Outside the scope of the cross.

JUDGE PAINTER: Overrule the objection.

Q (By Mr. Levie) I'm sorry. I misspoke myself. Did you tell Miss Chan on January 21 that your accountants would buy the necessary books and ledgers?

A No, I didn't, but it was -- I was present in the room at a conversation between Winston and Miss Chan and one of the regulations was out on the table, and it was being discussed, and it was agreed that upon registration that something would be needed, and Winston said that "yes, that is being set up now. As a matter of fact, we have just bought the binders for this and are setting them up."

Q Mr. Carr, did you happen to bring back with you after the noon recess the press releases? Subject to a brief examination on that I have no further examination, Your Honor.

JUDGE PAINTER: Do you need this Witness for that purpose?

MR. LEVIE: At some point we will. I assume the documents as profered will be turned over to us.

THE WITNESS: I can have them copied as soon as I leave here and be back here within an hour.

JUDGE PAINTER: Very well.

MR. HECHT: I have a couple of questions on recross.

RECROSS EXAMINATION

Q (By Mr. Hecht) Lloyd, Carr Financial was registered as a CTA, wasn't it?

A Yes.

Q And as of the date hereof are they still registered as a CTA?

A Yes.

Q And as a CTA were you permitted to sell commodity options? Was that the original designation for commodity option dealers?

A According to the CFTC's interpretive letter, yes.

Q Okay, when you filed your original FCM application you paid them $200, isn't that right?

A Yes.

Q And that money was deposited?

A Yes.

Q And at any time has the CFTC asked for an additional $200 with respect to a new application?

A No.

MR. HECHT: No further questions.

JUDGE PAINTER: Who will the next witness be here today?

MR. LEVIE: Charles Le Mieux III.

JUDGE PAINTER: You're excused, sir.

(Witness excused.)

MR. HECHT: There's a problem with Mr. Le Mieux. I couldn't get in touch with him yesterday. I called his Dad up in Montreal. He was in Toronto. He apparently is on his way out to the West Coast. It's short notice. The man is primarily based in Canada. Jim is going to go now and try and get in touch with him.

JUDGE PAINTER: Off the record.

JUDGE PAINTER: Back on the record.

You are going to call Mr. McCarthy as a witness, Mr. Hecht?

MR. HECHT: Yes, Your Honor.

Whereupon,

JAMES MC CARTHY

was called as a witness by and on behalf of the Respondent, and having first been duly sworn, was examined and testified as follows;

MR. LEVIE: Your Honor, we've turned over to Mr. Hecht two memoranda written by Mr. McCarthy and one page of handwritten notes written by myself and two pages of handwritten notes written by Miss Meltzer.

MR. HECHT: Off the record for a second, please?

JUDGE PAINTER: Off the record.

(Discussion off the record.)

JUDGE PAINTER: Back on the record.

Mr. Hecht, proceed.

MR. HECHT: Your Honor, I'd like two minutes, since I just got these documents, and they may be critical to my examination of Mr. McCarthy. I'd like five minutes to read them and study them.

JUDGE PAINTER: Off the record.

(A short recess was taken.)

JUDGE PAINTER: Back on the record.

MR. HECHT: I'd like to point out, as previously advised to this tribunal, the Respondents intend to bring a motion for a directed verdict at the close of the Division's case. Mr. McCarthy is our witness, and since he is up here in Boston now, rather than inconveniencing him and going back to New York and coming again, we're examining him without waiving our rights to bring on a motion for a directed verdict.

DIRECT EXAMINATION

Q (By Mr. Hecht) Mr. McCarthy, would you state your full name and address?

A James Joseph McCarthy, Jr., Cypress Avenue, Verona, New Jersey.

Q What is your present occupation?

A Branch Chief, Office of Audit and Financial Review, Division of Trading and Markets, Eastern Region, for the Commodity Futures Trading Commission.

Q On January 18 or January 19, 1977, did you have a telephone conversation with James Carr?

A Not that I remember.

Q Do you know who made the arrangements for Miss Chan and Mr. Purta to come up and audit the records of Lloyd, Carr and Co.?

A Yes. I did.

Q Did you know when those arrangements were made?

A The 18th of January of this year.

Q Who did you make those arrangements with? Did you make those arrangements?

A I made the arrangements. I had Miss Chan and Mr. Purta come up to do the audit.

Q Who did you make the arrangements with?

A Well, from listening to Mr. Carr's testimony previously this morning, apparently I made them with him.

Q Do you recall whether you called Mr. Carr or he called you?

A No, I don't.

Q Do you recall any discussion you had prior to speaking to Mr. Carr with respect to the need to set up a prompt audit for Lloyd, Carr and Co.?

A No, I don't. I don't remember.

Q Do you recall ever receiving a call from General Counsel's office on either the 17th or the 18th of January relating to Lloyd, Carr and Co.?

A Not from General Counsel's office, no.

Q Did--in that two-day period, do you recall speaking to Fred Spindell or Virginia Kristman from the General Counsel's office?

A No.

Q Were you aware prior to that date that Lloyd, Carr and Co. was a plaintiff in the litigations questioning the regulations?

A No.

Q You did make arrangements with Mr. Carr to have Miss Chan come up there, didn't you?

A Yes.

Q In fact, to your knowledge, did Miss Chan and Mr. Purta go to Lloyd, Carr and Co.?

A Yes, they did.

Q Do you recall the dates they went to Lloyd, Carr and Co.?

A They went there on the 19th of January.

Q During the 19th of January, were you in telephone contact with Miss Chan?

A Either the 19th or 20th, yes.

Q Do you recall discussing with her whether or not Lloyd, Carr and Co. met the minimum financial requirement of $50,000?

MR. LEVIE: Objection. Irrelevant.

JUDGE PAINTER: Overruled. Answer, if you can.

THE WITNESS: No. I don't remember.

Q (By Mr. Hecht) On either day?

A On either day.

Q Do you recall any discussions with Miss Chan about the names on the Lloyd, Carr bank a-counts?

A Yes.

Q What did Miss Chan say to you and what did you say to her?

A Miss Chan, as best I recall, said that the books were in poor condition, the books and records were in poor condition. Some of the accounts were in the name of Lloyd, Carr Financial Co. or Company, and other accounts were in the name of Lloyd, Carr and Co..

Q Did you discuss with her a possible solution or possible recommended courses of action during that two-day period?

A Yes.

Q What did you recommend?

A It seemed, from my conversation with her, that Lloyd, Carr and Co. had had a predecesssor firm by the name of Lloyd, Carr Financial Co., and it was just a matter of changing the name to Lloyd, Carr and Co. from Lloyd, Carr Financial Co..

Q Do you remember a situation with a bank account in Greenwich where it was in the name of Lloyd, Carr and Company--spelled out--rather than Lloyd, Carr and Co.--period?

A I remember a situation with a bank. I don't know where it was.

Q What was the situation with the bank?

A That the name of the bank was in the name of Lloyd, Carr and Company.

Q Was it the original position of the audit staff that the cash carried in that account should be disallowed?

A Yes.

Q Were there subsequent discussions between you with Miss Chan or other parties which resulted in the change of that decision?

A No.

Q Do you know how much was involved in that bank account?

A No, I don't.

Q It was a substantial amount, wasn't it?

MR. LEVIE: He just said he doesn't know how much was in there.

Q (By Mr. Hecht) Was there a substantial amount or an insubstantial amount in that bank account?

A For that bank account, I don't know.

Q Do you recall whether it was more than $100,000 or less than $200,000?

A No, sir.

Q Based on your conversations with Miss Chan, notwithstanding that disallowance, did she advise you that Lloyd, Carr had more than $50,000 in minimum capital?

MR. LEVIE: Which Lloyd, Carr, Your Honor?

MR. HECHT: Lloyd, Carr Financial and, or, Lloyd, Carr and Co.?

JUDGE PAINTER: Answer, if you can, Mr. McCarthy.

THE WITNESS: I believe she did.

Q (By Mr. Hecht) And during those conversations with Miss Chan as a result of her comments with respect to the state of affairs of the books and records, to your knowledge, did anyone ever advise Lloyd, Carr and Co. of what records or what journals the Office of Audit and Financial Review recommended for commodity option dealers?

A No.

Q As to commodity option dealers, they were now required to register as FCM's on January 17th, 1977, isn't that correct?

A Yes, sir.

Q At that time, had the Office of Audit and Financial Review developed a list of recommended journals or books to be kept by commodity option dealers?

A I think they had published it in Regulation 32.7.

MR. HECHT: Your Honor, I ask the Court to take judicial notice of Regulation 32.7, which was published in the Federal Register, and we dispense with filing it as an exhibit in this case.

JUDGE PAINTER: Notice taken.

MR. HECHT: Now, I am handing to the witness Section 32.7 and I ask him--

Q (By Mr. Hecht) Does it set forth, anywhere in that regulation what specific books and records should be maintained by a commodity options dealer?

MR. LEVIE: The regulation speaks for itself, Your Honor, so that's the best evidence.

JUDGE PAINTER: Let's hear the question again.

Q (By Mr. Hecht) Does it state anywhere in that regulation the specific types of books and records to be maintained by a commodity option dealer?

A Yes.

Q In what respect?

A Well--

MR. LEVIE: The regulation speaks for itself, Your Honor. The Court is as equally able to read the regulation as Mr. McCarthy is.

JUDGE PAINTER: Mr. McCarthy is an auditor, and I'm not an auditor. You're not an auditor, and Mr. Hecht isn't an auditor. I'd like to know if an audotor says, "I see there in good auditor-type language what is required."

Q (By Mr. Hecht) Let me put it this way, Mr. McCarthy. Is that phrased in terms that an accountant or a bookkeeper would know what to set up, or is that phrased in legal language?

A I think an accountant or bookkeeper who had some experience in the brokerage industry would understand this perfectly.

Q Isn't it a fact that someone who is registered as a commodity trading advisor is not required to keep these kinds of records?

A I don't believe they are. Correct.

Q Are those books and records requirements similar to the requirements, or identical to the requirements, imposed by the CFTC on futures commission merchants who sell futures contracts on margin?

A They are similar.

Q In fact, aren't the businesses of a commodity option dealer and a futures commission merchant who sells futures contracts on margin different types of businesses?

MR. LEVIE: Objection. This witness has not been qualified--

JUDGE PAINTER: Sustained. He is an auditor.

Q (By Mr. Hecht) AS an auditor, Mr. McCarthy, how many years have you been with the CFTC?

A Seventeen years.

Q During your 17 years, how many audits of FCM's have you conducted?

A I did audits for the first 8 years; for the past 9 years, I've been a supervisor. But the first 8 years, I did about, I'd say, 125 audits.

Q During the last 9 years, how many audits have you supervised?

A Maybe 900.

Q During the course of those audits, you have obtained an understanding of how a company operates that sells futures contracts?

A Yes.

Q During that period, did you ever audit or review the books and records of a commodity option dealer?

A Yes.

Q About how many dealers of that type did you either audit or review?

A Three or four.

Q Was that recently?

A Yes.

Q After January 1, 1977?

A Yes.

Q Based on your--were these audits or reviews as to these commodity option dealers?

A They were reviews.

Q Based upon your prior experience with purveyors of futures contracts and your limited experience with respect to commodity option dealers, isn't it a fact that they are really two different types of businesses?

MR. LEVIE: Same objection, Your Honor. What is the 'same type of business"?

JUDGE PAINTER: I think he wants to know whether the same type of books would be appropriate for an options dealer as for an FCM. And----since the witness has testified he has now done 900 or so examinations of FCM books and at least three or four reviews of option dealers, then he would be aware of any variation in the business practices of these two different type establishments.

MR. LEVIE: With respect to books and records?

MR. HECHT: Right. I've got to do one, before I can do the other.

Q (By Mr. Hecht) YOu understand that there are certain differences in the two types of businesses?

A I understand that there are differences in some records that have to be kept by option dealers, but the books of the firm, the general ledger, for an example, or cash and receipts book would be the same. The financial books of the firm I would understand to be the same. Some records may be different for an option--

Q Does it anywhere in that regulation state what specific books and records should be maintained by an option dealer?

A Yes.

Q Would you describe what you consider a specific list of books and records?

A It says, "Such records shall at least include all orders, filled, unfilled or cancelled; signature cards; books of records; journals; ledgers; cancelled checks; copies of all statements of purchase; exercise or lapse; and reports, letters, disclosure statements and confirmation statements."

Q Let's go through them one by one. What's the first item there?

A Orders.

Q In fact, did Miss Chan advise you that she had reviewed all of the order slips of Lloyd, Carr and Co. and that the customer records were in good condition?

A No, not that I remember.

Q To your knowledge, has anyone told you that their order slips were not properly maintained?

A No.

Q What's the second item?

A Signature cards.

Q . To you knowledge, has anyone ever advised you--what do you mean by signature cards?

A You mean, what the regulation means by signature cards? I would imagine it's an account form that is signed by a person upon opening their account.

Q Do you know if Miss Chan checked those documents at Lloyd, Carr and Co.?

A No, I do not.

Q Has anything come to your attention that those documents were not kept or maintained?

A No.

Q Let's go then to the next item. What is that?

A That's books of records.

Q Does it anywhere state in that regulation what books and records, and isn't it a fact that that regulation doesn't state what books and records?

A Yes.

MR. LEVIE: Yes, to which, Your Honor. There were two questions there.

Q (By Mr. Hecht) Isn't it a fact that that regulation does not state what books and records are to be maintained? It just says, "books and records"?

A "Books of records," it says. Yes. The answer is, yes, to the question.

Q Is "of" in there a typographical error?

A I'd think so.

Q What is the next item, it's journals, isn't it?

A Yes, sir.

Q By the way, should that read, "books of record", rather than, "books of records", or how should that be corrected?

A I don't know.

MR.LEVIE: I don't think Mr. McCarthy is in a position to correct the Federal Register.

JUDGE PAINTER: Mr. McCarthy is probably just as qualified to answer that. After all, he's the auditor who is reading this and applying it and making his examinations. I would be interested in your interpretation as well, Mr. Levie, and Mr. Hecht's.

Ask the witness the question again.

Q (By Mr. Hecht) How should the term, in your opinion, read, "books of records"? To be meaningful to you as an auditor?

A I don't know. It could read more than one way.

Q How could it read more than one way?

A It could say, "books of record". It could say, "books and records". It could say, "books or records".

Q But nowhere in there does it say what books or records?

A Not that I see.

JUDGE PAINTER: Before you go on, just for the record, do you have an understanding of what this means, Mr. Levie, whether it's "books of", "books or"--is this a typographical error or does the printed word mean what it says?

MR. LEVIE: I have no knowledge to indicate that the printed word means anything other than what it says. I'm not in any position to correct the Federal Register.

JUDGE PAINTER: You're a lawyer. I'm only asking you if you think there's a typographical error, and you say you don't think so.

MR. LEVIE: No, sir. I'm saying I don't know and I'm not commenting.

JUDGE PAINTER: Then you don't know--you state that you do not know what it means?

MR. LEVIE: That's correct.

JUDGE PAINTER: Mr. Hecht, do you know what it means?

MR. HECHT: Your Honor, I've looked at it ten times and, like Mr. McCarthy, each time I look at it, I think it could mean something else, and I've just given up.

JUDGE PAINTER: All right, move on.

Q (By Mr. Hecht) And the next item is journals, is it not?

A Yes.

Q But isn't it a fact that nowhere in this regulation does it say what journals? Or define the term, journals?

THE WITNESS: Your Honor, could I take some time to read the entire regulation?

JUDGE PAINTER: Of course, Mr. McCarthy.

Off the record.

(A short recess was taken.)

JUDGE PAINTER: Back on the record.

Q (By Mr. Hecht) Mr. McCarthy, isn't it a fact that up in 32.7(a) that it does not define what type of journals are to be kept?

A Journals, no; records, yes.

Q Let's stick with journals?

A No.

Q And there are many kinds of journals that are part of books and records, am I right?

A Well--

Q You know, the petty cash journal, cash disbursements journal, cash receipts journal, an option order journal?

A That's right.

Q The next item is ledgers. Is there anywhere in there that tells you what type of ledgers to maintain?

A No. I don't believe so.

Q And we've taken a recess so you can look over the entire regulation, right?

A Yes, sir.

Q Now, with respect to cancelled checks and copies of all statements, purchase, exercise or lapse, did anything come to your attention from Miss Chan or otherwise that these records were not maintained by Lloyd, Carr and Co.?

A No.

Q Are you aware that--are you aware of at any time that either Mr. Carr or his accountant asking any member of a list of the recommended journals that should be kept by a commodity option dealer?

A No.

Q Isn't it a fact that commodity option dealers being registered as an FCM was a very new thing with the agency?

A Yes.

Q Did you ever discuss, prior to February 17, did you ever discuss with anyone about your Division issuing an interpretive letter or anything to describe what you considered appropriate books, records, journals or ledgers?

A No.

Q In fact, you understand the Division of Enforcement has alleged that Lloyd, Carr and Co. did not maintain current books and records?

A Yes.

Q But you don't define what books and records, do you, at any time, in any writing to Lloyd, Carr and Co.?

A No.

Q In fact, didn't you instruct Miss Chan not to write Lloyd, Carr and Co. to tell them what books and records you felt a commodity option dealer should have?

A No, I didn't make any such instruction to her. Not that I remember.

Q Isn't it standard operating procedure for your Division to furnish comment letters to both applicants and to people who were already registered when you do an audit?

A It depends. It's usually standard, yes.

Q And the purpose of those letters is to give the registrant or the applicant an opportunity to correct the deficiency?

A Yes.

Q And isn't it the concern of your Division that books and records, appropriate books and records are important for the protection of the customers?

A Yes.

Q Do you recall having any discussions with the Division of Enforcement about not issuing any deficiency letter or comment letter to Lloyd, Carr and Co.?

A Yes.

Q Did you explain to them that this was contrary to your normal procedure?

A No.

Q Who in the Enforcement Division did ou discuss this with?

A Mr. Blau.

Q Isn't it a fact that as of the date hereof your Division has never issued a deficiency letter to Lloyd, Carr and Co. with respect to its books and records?

A Yes. Well, with one exception.

Q What was the one exception?

A We wrote them a letter on thei form 1-FR.

Q When was that?

A It was on or about January 19th.

Q Do you have a copy of that letter?

MR. LEVIE: Yes, and we also have a copy of your client's reply.

JUDGE PAINTER: Have those been admitted into the record, Mr. Levie?

MR. LEVIE: No.

MR. HECHT: Your Honor, I definitely would like to look further through this, but for now I'd like these to be admitted into evidence.

JUDGE PAINTER: Would you have them marked by the Reporter.

MR. HECHT: Let me just check them over. Let me reserve my right, and I can always bring it back.

JUDGE PAINTER: Off the record.

(Discussion off the record.)

JUDGE PAINTER: Back on the record.

Q (By Mr. Hecht) With respect to Respondent's Exhibit 13, is that a true copy of the letter that you sent to Lloyd, Carr and Co.?

(The document above-referred to was marked Respondent's Exhibit 13 for identification.)

A Yes.

Q And you--would you please take a look at the next document which is marked as Respondent's Exhibit 14; and is that the original of the letter you received?

(The document above-referred to was marked Respondent's Exhibit 14 for identification.)

A Yes.

Q In fact, Respondent's Exhibit 14 is a response to your letter of the 18th of January?

A The 19th of January, yes.

MR. HECHT: Your Honor, at this time, I move for admission of those two documents into evidence.

MR. LEVIE: No objection.

JUDGE PAINTER: They are so admitted--Respondent's Exhibits 13 and 14.

(The documents previously marked for identification as Respondent's Exhibits 13 and 14 were received in evidence.)

Q (By Mr. Hecht) Mr. McCarthy, the 19th, that was before Miss Chan was sent up to Lloyd, Carr and Co. to do her audit, wasn't it?

A I think it's the same day.

Q Didn't she go up there on the 20th and 21st?

A I don't know. I assigined her to the audit on the 18th. I forget which day she first went to Boston.

Q Isn't it a fact that that letter says that since there's only one minor adjustment, there's no need to revise the form 1-FR?

A Yes.

Q To your knowledge, at any time subsequent to that letter, and, in fact, was the response of Mr. Carr, dated January 21, 1977, sufficient and appropriate?

A Yes.

Q And since that time, isn't it a fact that--oh, excuse me, let me withdraw that question. Now, do you recall speakng with Miss Wai-Mon Chan on the 19th and 20th, and if my recollection is correct, didn't you testify that she advised you that they satisfied the minimum financial requirements?

A No, I don't think so.

Q Do you recall a conversation with her about the fact that Mr. Carr wanted his approval by Monday at 9:30 a.m. rather than at 10 o'clock because he had held up executing options, pending final approval?

A No.

Q Do you recall ever discussing with Mr. Carr or Miss Chan what to do with the customers' money that had come in after January 17th--what Lloyd, Carr should do?

A No.

Q Do you recall any discussions that Lloyd, Carr was holding them in a suspense account and not actually purchasing the orders, awaiting final approval?

A No, no.

Q Do you recall speaking to Mr. Carr on the 20th or the 21st and advising him that the Office of Audit and Financial Review had no problems with Lloyd Carr's registration application?

A No.

Q Do ou recall speaking to him on the 20th or the 21st?

A No, I don't. Not on those dates.

Q Do you recall speaking to him on the 24th?

A I recall speaking to him on the 25th.

Q Did you call him or did he call you?

A I returned his call.

Q And had he been trying to get in touch with you a number of times?

A Well, at least once.

Q During that conversation, do you recall advising him that, except for taking care of a few letters here and there, that there would be no problem?

A No.

Q What is your recollection of the conversation?

A Well, my recollection is that Mr. Carr was upset about the fact that our auditor was making an issue out of the fact that some accounts were in the name of Lloyd, Carr and Company or Lloyd, Carr Financial Company and, as I remember, he referred to it as "knit-picking".

Q At any time--okay, as a result, did you discuss this with Mr. O'Brien?

A Yes, I believe I did.

Q Did you and Mr. O'Brien come to a solution where you suggested that everything should be done under the name of Lloyd, Carr and Co.?

A Yes, I believe we did.

Q And did you advise Mr. Carr?

A Yes, I believe I did.

Q Did you request from Mr. Carr a letter that these various things had been done? And advised him to file an Amended Application?

A I don't remember.

MR. HECHT: Your Honor, let the record reflect that at this time I am handing the witness Division's Exhibit 32 and ask him--

Q (By Mr. Hecht) Does this refresh your recollection?

A May I read the document?

Q This is a letter that was apparently to you, dated January 24th, on Lloyd, Carr and Co. stationery, and I ask you, does this refresh your recollection?

A Yes, but could you repeat the original question that I told him--what did I tell him?

Q Did you ask Mr. Carr to furnish to you, or did you order Mr. O'Brien to ask Mr. Carr to furnish to you letters reflecting that certain actions were taken? I.e, the changing of the name of the bank account in Greenwich from Lloyd, Carr and Company--spelled out--to Lloyd, Carr and Co.?

A I don't have a clear recollection of telling him directly. I may have told Miss Chan to tell him. Apparently, someone told him. I don't have a clear recollection of telling him.

Q But the concept was that once Lloyd, Carr and Co. had made these changes, that as far as the Division of Audit was concerned, they had no problems with the application, isn't that a fact?

A Well, if all the assets were in the name of the firm that I understood to be applying, Lloyd, Carr and Co., no, I'd have to say, no, that the audit would still have to be reviewed before somebody could say there would be no problem with the meeting the financial requirements.

Q Isn't it a fact that with respect to the financial requirements, you told Mr. Carr on at least two occasions prior to January 25, 1977, that Lloyd, Carr satisfied the minimum financial requirements?

A No, I don't think so.

Q Did you tell anyone with Lloyd, Carr, associated with Lloyd, Carr and Co., or its accountant?

A I never spoke with anyone else, except Mr. Carr.

Q Do you recall--do you have any knowledge that Miss Chan advised Lloyd, Carr and Co. that they met the minimum financial requirements?

A No.

Q Whatever requests you made of Jim Carr, did he attempt to promptly comply with them?

A Yes.

MR. HECHT: I have no further questions.

JUDGE PAINTER: Mr. Levie?

MR. LEVIE: Just a few questions, Your Honor.

CROSS EXAMINATION

Q (By Mr. Levie) Mr. McCarthy, based on your experience, does the term, ledgers, and the term, journals, mean anything to you?

A Yes.

Q What does it mean?

A Ledgers would mean general ledgers of the firm's assets, liabilities and net worth. Ledgers would also mean customers accounts. You keep a ledger for customers accounts. That's about what I think the ledgers would mean. Journals? Well, that would mean a record of the daily business of the company--cash journals, P & S journals, option journals--it would be the entire day-to-day business of the company.

Q When a person applies for registration and submits a

1-FR, that's broken down into several categories, correct?

A Yes, sir.

Q And they are expected to reflect certain financial data on that 1-FR, correct?

A Yes.

Q Is there any relationship between the categories and data requested on the 1-FR and the books and records that are required to be kept?

A Yes.

Q What is that relationship?

A The relationship is that on the 1-FR you are supposed to show your assets, your current assets, non-current assets, current liabilities, non-current liabilities, and you capital section. That's the balance sheet of the 1-FR. And books and records of a firm normally should have those same categories.

MR. LEVIE: No further questions, Your Honor.

MR. HECHT: I just have a few more.

REDIRECT EXAMINATION

Q (By Mr. Hecht) I notice when you were describing ledgers, Mr. McCarthy, you indicated it could be this kind of ledger and this kind of ledger is normal. Isn't it a fact that when you're designing the books and records and what books and records should be kept for a company that it should have some relationship to the type of operations it conducts?

A Yes.

Q Isn't it a fact that, to this date, no one at the CFTC has ever published a list of what they consider appropriate books and records to be maintained by a commodity option dealer?

A Well,--

Q Does it ever tell you what journals should be kept?

MR. LEVIE: Can Mr. McCarthy answer the question, Your Honor?

MR. HECHT: I'm sorry.

THE WITNESS: I think some of the sections of 32.7, (b), (c), (d), and (e), try to tell you what kind of records should be kept.

Q (By Mr. Hecht) Generally, what type of records to be kept, am I right?

A Well,--

Q Do they tell you that you should maintain a cash disbursements ledger? Show me. And a cash receipts ledger?

A No.

Q Options purchase ledger?

A No. I--

Q And, in fact, since the--

MR. LEVIE: I think the witness was not finished with his answer.

Q (By Mr. Hecht) Please finish your answer?

A I think their cash receipts journal is generally understood under accounting principles, what it should contain.

Q But you admit that this regulation became applicable to this industry, when?

A This regulation became applicable on January 17th, I believe.

Q 1977, right?

A Yes.

Q Miss Chan was up on the premises on the 20th and the 21st, am I right?

A Yes.

MR. HECHT: No further questions.

MR. LEVIE: I have no further questions, Your Honor.

JUDGE PAINTER: You're excused, Mr. McCarthy. Thank you, and have a good trip back to New York.

(The witness was excused.)

Off the record.

(Discussion off the record.)

JUDGE PAINTER: Back on the record.

Mr. Levie?

MR. LEVIE: Your Honor, it was my understanding that Mr. Hecht made an offer to permit Miss Chan to go over to the offices of Lloyd, Carr and Co. to examine their books and records. We would reject any such offer for the following reason: the Commission's case, we believe, has shown that they had insufficient books and records. We cannot place Miss Chan in the position of superseding the finder of fact's decision as to whether there is present compliance. The allegations have been charged that there was not compliance, and I believe the allegations have been substantiated by evidence from the witness stand.

Therefore, I cannot accept Mr. Hecht's offer. It would serve no useful purpose, in other words.

JUDGE PAINTER: As I understand it, it is still your position that even if they were in immaculate order at this time, it would make no difference whatever, isn't that right, Mr. Levie?

MR. LEVIE: For purposes of my case, yes; for purposes of however it would help Respondent's case, that I can't comment on. The other problem I have is, we have taken a position that there has not been compliance with our subpoena.

JUDGE PAINTER: But you also thought that Mr. Hecht should have the right to bring in an immaculate set of records--books--that were brought up to date today, as a matter of defense?

MR. LEVIE: Asbsoultely. And if those books and records com in as part of the defense and somply with the subpoena, that obviously obviates the argument I had for that particular set of books and records.

At this point, with respect to the books and records, my subpoena could be complied with either by producing them now or through Respondent's case. It makes no difference to me.

JUDGE PAINTER: Your comments are in the record.

Off the record.

(Discussion off the record.)

JUDGE PAINTER: Back on the record.

We will adjourn the hearing now. The hearing will reconvene on Monday, March 21, 1977, in the 5th Floor Hearing Room, Washington, D.C., at 10 o'clock.

Off the record.

(Whereupon, at 4:30 p.m., the hearing in the above-entitled matter was adjourned, to reconvene on Monday, March 21, 1977, in Washington, D.C., at 10:00 a.m.)

COMMODITY FUTURES TRADING COMMISSION

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In the Matter of:

JAMES A. CARR and CHARLES P. LE MIEUX III
d/b/a LLOYD, CARR & CO., A PARTNERSHIP
84 STATE STREET, BOSTON, MASSACHUSETTS 02109

LLOYD, CARR FINANCIAL CO. : No. 77-6
84 STATE STREET, BOSTON, MASSACHUSETTS 02109

JAMES A. CARR

CHARLES P. LE MIEUX III

Respondents

- x

Sixth Floor Hearing Room
Commodity Futures Trading
Commission
2033 K Street, N.W.
Washington, D.C.

Monday, March 21, 1977

The above-entitled matter came on for further hearing, pursuant to adjournment, at 10:00 a.m.

BEFORE:

Honorable GEORGE PAINTER, Administrative Law Judge

APPEARANCES:

RICHARD LEVIE, Esq., and ELLEN MELTZER, Esq.,	CFTC, 2033 K Street, N.W., Washington, D.C. 20036; appearing on behalf of the Commission.
CHARLES HECHT, Esq.	Law firm of Charles Hecht, 60 East 32nd Street, New York, New York; appearing on behalf of the Respondents.

INDEX

WITNESSES

(None.)

EXHIBITS	FOR IDENTIFICATION	IN EVIDENCE
Respondents':		
15	712	--

P R O C E E D I N G S

JUDGE PAINTER: On the record.

This is the third week of hearings in CFTC Docket 77-6, James A. Carr, Charles LeMieux, d/b/a Lloyd, Carr & Company, et cetera.

Mr. Hecht, I believe you were to produce a witness for us this morning.

MR. HECHT: Yes, a Charles LeMieux III. We [illegible]ied to contact him over the weekend, myself, personally, Mr. Carr, Mr. Castlewitch -- all of us tried to contact him. We were unable to. I even left a message with his father in Montreal, to contact him Saturday and Sunday, and I never got a call back.

It should be pointed out that Mr. LeMieux -- I checked the files -- was never even served in this action. And in addition, this is one of the problems you run into in expedited treatment.

It was not in the list of witnesses furnished to Judge Toro. Whatever they said they wanted before Judge Toro, I gave them, and I've got the copies of the transcript of the hearing before Judge Toro and the relevant pages.

They asked for four employees, and all four were produced. I had pointed out that there was problems with Commission employees, because you have to make a formal application, and that's a different situation.

But they asked for four employees, and all of those were produced.

JUDGE PAINTER: All right. Thank you.

Any comments, Mr. Levie?

MR. LEVIE: Yes, Your Honor. Number one, with respect to Judge Toro's order, I would note for the record that Mr. Hecht asked for four Commission employees to be produced, without going through the formal subpoena process. None of them included James McCarthy, yet he was produced upon an informal request by Mr. Hecht, without requiring him to go through the formal procedures.

Secondly, Your Honor, on March the 16th, at page 442 to 443 of the transcript, I made an oral motion for the subpoena of Charles LeMieux III, as is permissible under Rule 10.68, and on Marcn the 17th, at page 672, again, there was a discussion about the presence of Mr. LeMieux and my request to have him here.

This morning, at approximately 9:45, I had a secretary from my office call the Lloyd, Carr Canada office and ask for Charles LeMieux III.

She was asked what company she represented. She said, "It's personal," and the secretary put her on "Hold" and came back and said, "He's on the telephone. May he return your call?" And she said, "No. I'll call back."

So, I do believe that Charles LeMieux III is in Canada, and I believe that he should be produced under 10.68 and under the agreement that we had with Judge Toro, which I believe includes this.

But putting Judge Toro's matter aside, I think the oral subpoena I asked for on the 16th and reiterated on the 17th was sufficient notice. He is the last Commission witness in its direct case, and his failure to be here, I would argue to the Commission, justifies an appropriate inference that his testimony would be adverse to the position of Respondents in this case.

MR. HECHT: Okay. With respect to that, I tried him at home. If you want to go in, I'll call him right now at the office and tell him to get down here tomorrow morning. That solves that problem.

JUDGE PAINTER: Do you want him here tomorrow morning, Mr. Levie?

MR. LEVIE: Yes, sir.

JUDGE PAINTER: Off the record.

(Short recess.)

JUDGE PAINTER: On the record.

Mr. Levie, would you give us the results of the telephone call?

MR. LEVIE: It appears, Your Honor -- well, to backtrack. We spoke -- that is, myself, Mr. Hecht and Ms. Meltzer -- called Lloyd, Carr, Canada. Mr. Hecht asked for Charles LeMieux, and he was connected with Charles LeMieux, Junior, who is the father of the witness here subpoenaed, and was told that the son was probably in St. Louis, with James Carr.

Mr. Hecht then called James Carr in St. Louis, and it looked like Charles LeMieux III was at points unknown, perhaps, Toronto, but Mr. Carr didn't know where.

Mr. Carr agreed to call Montreal, at Lloyd, Carr, Canada, and Mr. Carr called us back and informed Mr. Hecht, myself and Ms. Meltzer, that it appears that Charles LeMieux III is in Canada today -- Montreal, that is -- and will not come to testify.

Mr. Hecht explained to him that the oral subpoena was in effect served on Mr. Hecht as counsel, and under the rules, he is a proper party for service, and Mr. Hecht indicated to Mr. Carr that Charles LeMieux had filed an answer to this case and was indeed in this case.

I'm not sure what the bottom line is. Mr. Carr indicated that Mr. Hecht was not to contact certain Canadian lawyers in an effort to get in touch with Mr. LeMieux.

I don't know whether Mr. LeMieux will be here tomorrow or not, but I think it's clear he's on notice. Mr. Carr has indicated a refusal to let Mr. LeMieux come down, and I don't know where we go from here.

JUDGE PAINTER: All right.

MR. HECHT: Well, let's clarify one thing. Tomorrow, he is testifying before the Toronto Securities Commission. That was also stated in the phone conversation. And Wednesday, he's got to be back.

What has happened is they have worked out an arrangement with the Quebec Securities Commission, where Charles LeMieux III has been assigned the direct responsibility to handle customer accounts in Canada. He is a landed Canadian immigrant.

Mr. Carr couldn't even get in touch with him, but he said this is what it appears to him, that he is there. He's not in Toronto; we've checked.

Secondly, as a practical matter, I don't really think he is a relevant witness, to the extent the Commission has under its control employees who spoke with Mr. LeMieux, and since they have them under their control, they can just as easily produce their own employees.

And thirdly, with respect to whether or not he is a, quote -- whether or not the answer waives the requirement of service, at this time, it's a legal question. We still reserve our rights to object with respect thereto.

He has never been served. I checked the official files this morning. He has never been served. And as far as I could see, it was never attempted to serve him.

JUDGE PAINTER: All right. There's no need in spending more time on this matter.

The fact is, the statute gives an applicant an opportunity for a hearing, and Mr. LeMieux has that opportunity.

The Commission will make whatever inferences it cares to because of his failure to appear. If I were writing the final decision in this matter, I would make appropriate inferences from his failure to appear, as a result of the oral request made at the hearing by Mr. Levie.

MR. HECHT: Okay. It should be pointed out, two things, Your Honor. The oral request was made on Friday. They've had plenty of time to serve a subpoena on him, and they haven't done so. And to announce it Friday afternoon, over the weekend, I don't think is a fair inference.

The second is that the burden of proof is on the staff at this stage of the litigation, and they have to carry their burden of proof.

JUDGE PAINTER: All right. Now, did you want to bring up your motion, Mr. Hecht?

MR. HECHT: Well, we have some preliminary matters. In accordance with Mr. Levie's request of Mr. Carr, I believe it was Thursday or Friday, with respect to a certain release Mr. Carr referred to in the testimony, I have brought down with me the copy of the release. It is a release which was supposed to be published for publication in the Federal

Register on January 19th, 1977. And I'm submitting the first page of the release and the relevant portion, which is page 7 of the release, which is what his testimony referred to.

And I ask that the Reporter mark this as Respondents' Exhibit 15.

(Whereupon, the document was marked Respondents' Exhibit No. 15 for identification.)

JUDGE PAINTER: Any other matters, Mr. Hecht?

MR. HECHT: In addition, during that phone conversation, Mr. Levie made an oral request that the entire file of Lloyd, Carr & Co., relating to releases received from the Commission be furnished, all releases. And the company, I checked, where this came from, has an extensive file.

Mr. Carr said on the phone that he would consider the same, but he feels that there should be some limitations, because this would be, in his opinion, a fishing expedition, and I kind of agree with him --

JUDGE PAINTER: This is a release of all releases that Mr. Carr has in his possession?

MR. HECHT: Of the CFTC. It's a file about two inches thick.

JUDGE PAINTER: Well, I would assume, Mr. Levie, that you have possession of the same documents here, do you not?

MR. LEVIE: We do, Your Honor, but I think the request has been somewhat misconstrued. The request was for copies of all the releases in the possession of James Carr which he relied upon with respect to the registration requirements for FCMs and APs.

So it's not a question of what the Commission has. It's a question of what Mr. Carr had and thus relied upon.

MR. HECHT: And this is the one he has furnished.

JUDGE PAINTER: All right. We have that, so that's all we need.

MR. HECHT: The second, Your Honor, is a preliminary matter with respect to the subpoena duces tecum. Once again, I'd like to renew my objection. I checked the rules, and I checked the official files of the Commission this morning, and a subpoena duces tecum was made in this case ex parte, and under Rule 10.68a(2),unlike a personal subpoena, requires service on the party upon whom the documents are subpoenaed.

The application on February 22nd and the subsequent, I understand, application in March, if there was one, were both made ex parte, and accordingly, the subpoena was not properly issued by this tribunal.

Now, we have voluntarily furnished the information, while reserving our rights to the subpoena. I once again make known to the tribunal that we preserve our objection.

In thataarea, we, as you know, offered Ms. Chan the right to come up Friday and look at the books. What we are doing is we are photostating them tonight. We will have tomorrow morning the three specific documents, I believe, that were discussed -- the cash disbursements ledger, the cash receipts ledger, the general ledger with the related trial balances for the last two months.

In that connection, what I have asked them to do, rather than release the original books which are needed in the day to day operation, I have asked them to photostat the entire book, with the names, with a certificate of the person in custody of those books, saying that this is a true and correct complete copy. And then, what we'd give the Division of Enforcement would be copies of that, less the customer names, but then you will have the documents to compare the original to what is given to the Division of Enforcement for verification that it's the identical document.

JUDGE PAINTER: Mr. Hecht, I want to repeat to you that I directed you earlier in this proceeding -- I don't recall the precise date -- to permit Ms. Chan, an auditor, to inspect those books and records.

And it was my clear understanding of the colloquy which followed that you denied Ms. Chan the right -- you and your client -- denied Ms. Chan the opportunity to do so.

Because we have reversed the ruling at the request of Mr. Levie to admit into the record events that transpired after February 23rd, if you submit copies of your books and records that appear to be in order, we will -- whether or not they are in order -- we will receive them in evidence.

MR. HECHT: Okay. Your Honor, in that connection, I think one thing should be clarified. Since Judge Toro had retained jurisdiction, my recommendation was we would have no objection, provided that there was a court order from Judge Toro with suitable protection --

JUDGE PAINTER: And I flatly stated to you, Mr. Hecht, that that was of no concern of mine. I was not asking you or Mr. Levie to get an order from Judge Toro. I simply directed you to permit an authorized CFTC auditor to go to the premises and inspect the books and records.

MR. HECHT: I wanted the limitation, and I insisted that as a prerequisite, that there be a court order, and that was from me, and I think the record should be clear that that was from me, for the protection of my clients' business.

JUDGE PAINTER: Now, where do we go from here, Mr. Levie?

MR. LEVIE: If I might have a moment to respond to some of Mr. Hecht's comments.

I think if one reads Rule 10.68a(2), it's quite clear that a subpoena duces tecum and the application thereto need not be served upon other parties.

A formal motion for the issuance of that type of subpoena was filed with the court at the time the original subpoenas were issued.

Secondly, Your Honor, with respect to the proffer of xeroxed books and records, perhaps Your Honor is ruling in advance that they would be admissible. The position I will take at the time they are proffered is that they should not be admitted. They have no probative value to come in by themselves, without testimony as to who prepared them and when they were prepared.

And again, that matter as to the compliance with the regulations only would go to the degree of sanction that might or might not be imposed.

JUDGE PAINTER: I would just advise Mr. Hecht that I will admit them in. I do not feel that Mr. Hecht was in compliance with my direct order while we were conducting this hearing in Boston.

I think it makes a difference -- it would, if I were writing the opinion, make a difference to the outcome of this proceeding.

Now, we have no witnesses today, Mr. Levie?

MR. LEVIE: No, Your Honor, and I must object to that, because Mr. Hecht and I spoke by phone on Friday afternoon, at which an attorney from the Office of General Counsel was present, and I asked Mr. Hecht if Mr. LeMieux was going to be available, and he indicated at that time he didn't know, and I asked him who his other witnesses would be -- or rather, would he have other witnesses -- and he indicated he would.

I came in here this morning, prepared to have Respondents moving forward on their case with additional witnesses.

I can only assume, based on Mr. Hecht's conversation with us on Friday, and the awareness that the only additional witness I was going to call in my case-in-chief was Charles LeMieux III, that this was a conscious decision not to bring witnesses here this morning.

MR. HECHT: First of all, there is presently pending -- and I explained to Mr. Levie -- an interlocutory appeal before the Commission, with respect to the production of certain documents, or a summary thereof --

JUDGE PAINTER: Mr. Hecht, I want to point out to you that at the time I granted you permission to take that appeal that it would in no way delay this proceeding.

MR. HECHT: Secondly [illegible] I explained to Mr. Levie -- that we were bringing [illegible] motion for a directed verdict, and since the Commission is making the ruling with respect thereto, since they are the ones who are making the ultimate decisions the way you interpret the orders in this case, that that's got to be resolved first, or we're not going to waive our rights. When Mr. McCarthy came on the stand, I made it very specific that we're not going to waive our rights.

The third is that this hearing was held in Washington over my objection. I've got to be back in New York and take a 1:00 flight out. And until the Commission rules on this motion for a directed verdict, I don't think we're in a position to go ahead with our particular case. It's authorized under the rules --

JUDGE PAINTER: I formally have your motion for a directed verdict before me, Mr. Hecht.

MR. HECHT: Right.

JUDGE PAINTER: I am denying your motion, Mr. Hecht. I have read over your document. It is several pages.

MR. HECHT: That's the formal motion, too. That's the motion, and that's the memo you have.

JUDGE PAINTER: And if I were to write the initial decision in this matter, Mr. Hecht, I would further decline to certify this particular question to the Commission, this motion.

So I am denying your right to take an interlocutory appeal on this matter. Now, where do we go from here?

MR. HECHT: Well, then, we'll start bring our -- there is a Mr. Pollack coming in -- Your Honor, with respect to the interlocutory -- you've denied my motion.

JUDGE PAINTER: Correct.

MR. HECHT: I announced this before. I feel that under the unusual procedures adopted by the Commission in this case, I think it's only proper that this be presented to the Commission.

If in fact they have advised you that they do not even want to consider such a motion, I think that we are entitled to know that on the record.

JUDGE PAINTER: Mr. Hecht, I can assure you, I have had no contact whatsoever with the Commission concerning this matter.

I have just stated to you on the record that if I were writing the initial decision, I would dispose of this in a like manner.

I do not believe this case lends itself to a directed verdict.

MR. HECHT: Well, I'd like to state my reasons on the record, Your Honor, because I think they very strongly do, and I think in this kind of situation --

JUDGE PAINTER: Mr. Hecht, I can tell you this. Had you permitted an auditor to go to your offices in Boston, review those books and records, and had that auditor come back and testified under oath that those books and records were in order, that there were no irregularities whatsoever, I might have given more thought to the motion you have filed today.

But in view of your intransigence on that issue, I certainly would not certify this question to the Commission.

MR. HECHT: Your Honor, in view of my intransigence, two points I think are very important to note. First of all, Friday, after Mr. Levie made his motion, I changed accordingly and authorized her.

Secondly, as the evidence shows in the staff's case, the auditors came up on the 20th and 21st and were permitted to audit.

Subsequently, as Mr. O'Brien testified, the auditors were in effect directed to go up within another seven days, to make a, quote, "another audit," end of quotes, which was really for the Division --

JUDGE PAINTER: Now you are arguing the case again, Mr. Hecht.

MR. HECHT: No. I think this is very important, the background, because --

JUDGE PAINTER: I have heard this, Mr. Hecht, and I am quite aware of those facts --

MR. HECHT: And I felt --

JUDGE PAINTER: -- don't interrupt me. The point is, I wanted to know whether those books and records were up to date at the time I was conducting the hearing in Boston, and I was interested in Mr. Levie's response if it were determined that they were in perfect order.

Now, I am not too happy with the position that the Division takes, that they might not be able to settle this matter if it were shown that your client was in full compliance with every letter of the law, with one single exception, that is, that you were not registered.

They weren't able to get to that point.

MR. HECHT: Your Honor, even when you made your directive to me, it was unacceptable to the Division.

JUDGE PAINTER: Mr. Levie stated on the record that in view of my order, he would not contact a single customer of your client.

MR. HECHT: Your Honor --

JUDGE PAINTER: I believe that's in the record, is it not, Mr. Levie?

MR. LEVIE: Yes, Your Honor.

MR. HECHT: And I also pointed out in the record that such an order is not enforceable; that the only order that would be enforceable for contempt would be an order of a Federal District Court.

So there's no sanction, and therefore, with no sanction, and their skilled attorneys, there is in effect no protection.

JUDGE PAINTER: Well, I disagree with your theory, Mr. Hecht. But I want to know now, where do we go?

MR. HECHT: Okay. I'd like to state the reasons for my motion for directed verdict on the record, because I think they are relevant, and it's not a piece of paper --

JUDGE PAINTER: Well, Mr. Hecht, you have given me the document --

MR. HECHT: That's in writing, Your Honor.

JUDGE PAINTER: -- I have read this. I'll give you five minutes to make your statement, but then I want to move.

MR. HECHT: Your Honor, it's one thing to be on the record; it's another thing to be somewhat buried in the exhibits, where people may not read them.

I think the point here should be very clear of why the staff has not made out a prima facie case.

JUDGE PAINTER: All right. You've got five minutes.

MR. HECHT: Okay. There are three sets of allegations. One, failure to be registered. The failure to be registered was due solely to the acts of the staff. It is conceded on the record by them that there is no question that Lloyd, Carr & Co. met the minimum financial requirements. It is also clear on the record that Messrs. LeMieux and Carr qualified from a fitness point of view.

In accordance with the published releases of this agency, those were the only two criteria to be used in granting or denying an FCM application.

Since Lloyd, Carr met those, and it's undisputed that they met those particular attributes, they should have been directed.

Secondly, as a matter of law, under Judge Gagliardi's decision in British-American Commodity Options, the mere fact that a registrant or prospective registrant is doing business without being registered after he has filed his application in good faith under these circumstances, standing alone does not state a cause of action.

And he accordingly granted a directed verdict. Similarly, in the British-American administrative proceeding, the staff raised the same argument, and Judge Hunt took the position that this was disposed of by Judge Gagliardi's ruling, and it is not a legal basis upon which to deny an application.

What the staff did here is, after the fact, and after Lloyd, Carr & Co. clearly met the requirements, including a letter from Mr. McCarthy, dated January 18, 1977, even the one FR was acceptable. There was one minor deviation, but he said it was acceptable.

The staff still came up, did an audit, and satisfied themselves again that Lloyd, Carr satisfied the minimum financial requirements. There is no published release, and in fact, the releases are exactly to the contrary, that as of January 17, 1977, certain books and records had to be maintained.

And as the staff's own witnesses testified, there is no definition in the sections, nor has there been any directions from the Audit Department, as to what are the appropriate books and records to be maintained.

Now, the other thing that's very important is Lloyd, Carr & Co. -- or Lloyd, Carr Financial -- which are one and the same, were registered as commodity trading advisors.

Under 5USC-558c, that was a license -- and no one disagrees -- to sell commodity options prior to January 17th. That license has not been revoked. Therefore, it's perfectly valid and legal for them to continue selling, since they have a license upon which they were originally authorized to do business in this manner, and such license has not been revoked.

And it is admitted by the staff's own complaint in this action, because one of the purposes of this action is to revoke that license. It has not yet been revoked.

A further aspect is the books and record-keeping. Now, under 558c(L) and (2), as a matter of law, an administrative agency must give to the applicant notice of what the deficiencies are and the opportunity to correct them.

The testimony of Ms. Chan and Mr. McCarthy and the files clearly indicate not only was no such notice ever given to Lloyd, Carr & Co., but at the specific instructions of the Division of Enforcement, the audit staff was directed not to furnish a comment letter.

Now, it seems to me, as a lawyer in this industry, and as someone who is concerned with the protection of the public, the important thing is that you should have books and records which are accurate, so that the customers are protected.

And one of the problems in this area -- and everyone knows it -- is there has been no direction from the staff of what books and records are required. The regulation doesn't state, the statute doesn't state; the industry has asked for a list of what they think are appropriate books, records and ledgers to be maintained by a commodity options dealer. None has been forthcoming, and in this case, it was deliberately withheld.

JUDGE PAINTER: Your time is up, Mr. Hecht. I want to remind counsel that once a ruling is made in the future, let's live with it, even though you don't agree with it.

MR. HECHT: Well, Your Honor, I think --

JUDGE PAINTER: No more argument on this, Mr. Hecht. We are finished with this now.

Now, I want to know, Mr. Levie, are you finished with putting on your direct evidence?

MR. LEVIE: But for Mr. LeMieux, yes, Your Honor.

JUDGE PAINTER: Now, Mr. Hecht, are you ready to go forward with your case?

MR. HECHT: I will be, tomorrow morning. I expected and I have requested the right to present this motion orally to the Commission, since they are the ones who have to make the initial determination on this.

JUDGE PAINTER: Well, that's been denied. So that's where we now stand. Now, what's your position, Mr. Levie, regarding -- are you joining him in a motion for continuance until tomorrow, or what?

MR. LEVIE: No, sir. I am prepared to go forward.

JUDGE PAINTER: Do you have any witnesses with you today, Mr. Hecht?

MR. HECHT: No, Your Honor, because of the time limitations and the fact that this was put into Washington over my objection.

I advised the people that it was very unlikely that they would testify and to be here tomorrow morning.

JUDGE PAINTER: Mr. Hecht, I feel that I have gone a little beyond the call of duty to accommodate you on many, many occasions in the past. I see nothing in the regulations saying that this hearing must be conducted anywhere, in New York or Boston, and it was my original idea to conduct all of this proceeding right here in Washington.

But because of your request, and yours alone, I made the first week in Boston. At your request, I was to have the second week, in New York, but at your request again, I resumed that hearing in Boston.

Now we are here in Washington, and we are ready for you to put on your case, and I would like for you to get your witnesses assembled.

Do you have any Commission witnesses that are present here today?

MR. HECHT: There's a Mr. Pollack from Chicago, and Mr. Levie and I have worked out arrangements that he is to come in tomorrow morning.

MR. LEVIE: Oh, no; sometime tomorrow.

MR. HECHT: Sometime tomorrow?

JUDGE PAINTER: What time tomorrow, Mr. Levie?

MR. LEVIE: I'll have to check with him today.

MR. HECHT: I'll have my people here at 10 in the morning. However, Your Honor --

MR. LEVIE: May I ask who his witnesses will be, Your Honor?

JUDGE PAINTER: Would you state that for the record, Mr. Hecht?

MR. HECHT: I haven't yet decided who they will be. One of them will be a Mr. Labus. I haven't decided who the others are yet.

Now, there is one thing I'd like to set clear for the record. The first week in Boston was at the request of the staff, which I objected to very vehemently. The second week, the first two days were in Boston because the books and records were up there, and we suggested that because they were up there, fine.

As for this part of the hearing, all of the Respondents' witnesses reside either in Boston or in Greenwich, so obviously, the most convenient forum would either be New York or Washington. And at the same time, as this tribunal well knows, they are supposed to start a British-American hearing on Monday of next week. I just found out this morning that I've got a sheaf of documents about a half-inch thick, and there's no way outside of my office, even at night, where I have the staff to work on that aspect of the motion. That's why I asked to be brought back to New York for this week.

But the initial hearing was set in Boston over my objection, Your Honor. It was.

JUDGE PAINTER: Well, it was my understanding that both parties wanted it there.

MR. HECHT: That is absolutely not the case.

JUDGE PAINTER: I stand corrected, then.

Mr. Levie?

MR. LEVIE: I have an additional inquiry, Your Honor, on the number or identities of potential witnesses that may or may not be called by Mr. Hecht during Respondents' case-in-chief.

JUDGE PAINTER: Mr. Hecht, you have indicated Mr. Labus and Mr. Pollack. Any other witnesses?

MR. HECHT: Right. There will be other witnesses. I haven't made up my mind. To be very honest, because of this expedited procedure, I haven't had a chance to interview them. We've been trying this case right through the day, and I have been preparing for the next day, and I'm sitting down --

JUDGE PAINTER: I'm going to have to make this very clear for the record now. If we recess this thing again today, that at 10:00 tomorrow, we begin immediately on taking evidence. If there are any preliminary matters to be disposed of, we will convene at an earlier hour, at 9:00, even 8:30. But I want evidence to be put into the record beginning at 10:00 a.m., and I want to stick with evidence to the extent possible, until we conclude this hearing.

MR. HECHT: Your Honor, with respect to the motion for a directed verdict, I'd like the original back, to be filed with the Hearing Clerk, and with your notation on there, accordingly. I feel that under the circumstances of this hearing, where they have taken away the ultimate decision-making power, or the initial decision-making power, from the Administrative Law Judge, I feel that this has to be taken up directly with the Commission.

JUDGE PAINTER: I am aware of your feelings, Mr. Hecht, but you must learn to abide by a ruling made. That's just the only thing you can do at this point.

I wish you had complied with my ruling in Boston, to permit that auditor to go to your premises, but you didn't.

MR. HECHT: But Your Honor, the Division of Enforcement took a position then, and because of the position they took, it would have been irrelevant evidence, because they took the position that it wasn't relevant. Then, when they changed on Friday, I immediately made that offer. Now, you have to understand --

JUDGE PAINTER: Mr. Hecht, I only bring this up for this reason, that it may well have changed my view on this ruling that I have made today.

Now, you are going to come in tomorrow at 10 and begin putting on your case; is that true, Mr. Hecht?

MR. HECHT: That is true, unless the Commission, since they'll probably get this motion today, considers it, and then it's up to them. But I have no control over that.

But I'll give it to the Hearing Clerk for appropriate distribution. That's all I can do.

JUDGE PAINTER: Anything more today, Mr. Levie?

MR. HECHT: There is one thing, Your Honor. Consistent with our prior discussion, since I announced that I was going to do this on Thursday or Friday, I fully expected that the way this particular hearing has been structured procedurally, that it would have been sent up there in due course.

Therefore, we anticipated, and I figured they would want at least a half an hour argument from each side.

JUDGE PAINTER: Mr. Hecht, I think we are wasting a lot of our time on that. I'm sure you don't like my ruling, and I can assure you that I have been wrong many times in the past. But generally, people correct me.

Mr. Levie?

MR. LEVIE: Your Honor, Mr. Hecht has had the opportunity to hear the Division's case and its witnesses. Again, I would ask that without tying him down to calling or not calling certain individuals, he obviously has an idea of names of the potential witnesses who might be called, and I would ask that that be furnished at this time, in open court.

MR. HECHT: I don't -- there is no authorization for it under the particular rules. I will let you know tomorrow morning. My hands were full this weekend, preparing this motion, because I submitted it in good faith, based on a certain understanding, plus the preparation of the papers for Judge Gagliardi, where I am arguing at 4:00 this afternoon.

JUDGE PAINTER: Now, Mr. Hecht, we're going to run six hours tomorrow, three in the morning and three in the afternoon. Try to have your witnesses to fill up that space and time.

MR. HECHT: When does the earliest plane from Boston get here? I've got to fly them in from Boston. When does the earliest plane get here from Boston?

MR. LEVIE: I'm sure there's a plane leaving Boston at 7:00 or 7:30.

JUDGE PAINTER: I believe it's 7:00 or 7:30 and an hour trip down. No problem.

MR. HECHT: Okay. It should be no problem to get here by 10:00.

JUDGE PAINTER: We'll recess until 10 a.m. tomorrow morning.

(Whereupon, at 10:50 a.m., the proceedings were adjourned, to reconvene Tuesday, March 22, 1977, at 10:00 a.m.)

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COMMODITY FUTURES TRADING COMMISSION

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In the Matter of:

JAMES A. CARR AND CHARLES P. LE MIEUX III
d/b/a LLOYD, CARR & CO., A PARTNERSHIP
84 STATE STREET, BOSTON, MASSACHUSETTS 02109

LLOYD, CARR FINANCIAL CO.
84 STATE STREET, BOSTON, MASSACHUSETTS 02109 : No. 77-6

JAMES A. CARR

CHARLES P. LE MIEUX III

Respondents

- x

Hearing Room 805
Commodity Futures Trading
Commission
2033 K Street, N.W.
Washington, D.C.

Tuesday, March 22, 1977

The above-entitled matter came on for further hearing, pursuant to adjournment, at 10:20 a.m.

BEFORE:

HONORABLE GEORGE PAINTER, Administrative Law Judge

RICHARD LEVIE, Esq., and ELLEN MELTZER, Esq.,	CFTC, 2033 K Street, N.W., Washington, D.C., 20036; appearing on behalf of the Commission
CHARLES HECHT, Esq.,	Law Firm of Charles Hecht, 60 East 32nd Street, New York, New York; appearing on behalf of the Respondents.

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Division		
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PROCEEDINGS

JUDGE PAINTER: On the record.

We are continuing with the hearing on Docket Number 77-6. I anticipate that counsel will have some remarks for the record before we begin taking evidence, and let's limit that to five minutes each.

Mr. Levie, any statements?

MR. LEVIE: Your Honor, yesterday Mr. Hecht introduced a partial document as Respondent's Exhibit 15, which was page 1 and page 7 of a Federal Register release of January 19. I have had marked as Division Exhibit 34 for identification the entire document which was submitted to the Federal Register of that same date and I wish to introduce that into evidence.

JUDGE PAINTER: Will you have it marked by the Reporter.

MR. LEVIE: It has been, Your Honor, and I will pass a copy around to Mr. Hecht.

MR. HECHT: Let me take a look at it.

Your Honor, I'd like to point out for the record that I think most of this "A" is irrelevant comment for the portion which states what the standards will be for accepting FCM applications which is the fitness requirement and the minutes adjust to working capital requirements. I should also point out that theSSecond Circuit, at least during oral argument, indicated they did not consider the notice in the

Federal Register that people should file within a certain day to be proper notice under the law and they so stated from the Bench. And the third aspect and it should be noted here that even if someone complied and filed in timely manner in view of the 60-day processing, physically certain people by law couldn't be registered. To me the applicable provision here, and when Mr. Levie wanted was that portion of the publications of the Commission on which Mr. Carr was relying on, that they satisfied the requirements as an "FCM".

JUDGE PAINTER: Your comments are noted for the record, Mr. Hecht. I don't think it would unduly burden the record to admit Division's exhibit 34 into the record. It is so admitted.

(Division's Exhibit No. 34
was received in evidence.)

JUDGE PAINTER: Mr. Hecht.

MR. HECHT: I'd like to note my exception for that because grounds for denial of certain of the respondent's exhibits have been they didn't want to clutter the record with too many reading and I think the rule should be applied for both.

Second, there is presently pending an interlocutory appeal relating to the the disclosure of certain data on the processing of "FCM" and "AP" applications. As of the date hereof I have received no advice relating to their ruling on this appeal, which is obviously this information is needed for me to prepare a defense to our second, third and fourth affirmative defenses. I want to know if anyone has heard of a Commission ruling.

JUDGE PAINTER: Mr. Levie, any information to that effect.

MR. LEVIE: I have no information to that effect.

JUDGE PAINTER: Then we will proceed with the taking of evidence, Mr. Hecht.

I would just like to know when there is a ruling on this because I need that information in order to prepare for Mr. Paulek, a witness coming here from the Registration Commission. I also at this time, since I do not have a secretary down in Washington or office facilities and requested the hearing be in New York for the convenience of counsel and its parties will make an oral application at this time to disqualify Chairman Bagley and Vice Chairman Rainbolt from participating in this case, even from this date on as well as I consider their participating in this case before this improper. They have issued certain press releases which are attached--

JUDGE PAINTER: Are you asking me to rule on that motion, Mr. Hecht?

MR. HECHT: I think it should be transmitted to the Commission.

JUDGE PAINTER: I think that should be done through proper channels and I think it would be rather futile to ask me to do something that I can't do. And certainly you have my leave to file with the Hearing Clerk such motion and it will be transmitted to the proper parties.

MR. HECHT: Okay. I don't have the facilities and I have nor been offered the facilities to have it typed up for the time made available for it, but this doesn't come as a surprise. It is presently encompassed in the pending action before Judge Toro, 77-SIB 666.

JUDGE PAINTER: If you will see me about accomodations during the lunch hour I will see what can be done about it.

MR. HECHT: Thank you, Your Honor.

JUDGE PAINTER: Who is your first witness today?

MR. HECHT: My first witness today will be Jack Cosulich.

I want to point out I still have a continuing objection to the hearing being held here in Washington, it is not in compliance with Rule 10.61 of the Rules of Practice or the appropriate provision of the Administrative Procedure Act.

JUDGE PAINTER: Your comments are in the record.

Will the gentleman just named stand up.

Whereupon,

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Whereupon,

JOHN J. COSULICH

was called as a witness by and on behalf of the Respondents and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HECHT:

Q Would you please state your full name?

A John J. Cosulich.

Q What is your present occuptation?

A Director of Operations for Lloyd Carr and Company.

Q Are you normally called John or Jack?

A Jack is what everyone calls me.

Q Jack, when did you become associated with Lloyd Carr?

A In July of 1976.

Q And in what capacity?

A As a salesman.

Q What is your present capacity?

A Director of Operations.

Q Did there come a point in time when you became aware that Lloyd Carr had instituted litigation against the CFTC relating to its proposed new rules?

A Absolutely.

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Q In that connection were you designated to have any role in that particular litigation by the company?

A Yes, they asked me to attend all the hearings so that I could feed back into the board any feelings that I has as to which way the hearings were going, any new light that was shed on regulations which were trickling down and which were confusing at times.

Q Were you also directed to coordinate with counsel between counsel and the company?

A Yes.

Q And in that connection did you attend the oral argument before Judge Knapp on December 10, 1976?

A I did.

Q And were you present throughout that argument?

A Yes, I was.

Q During that hearing do you recall any discussion by the court or any questions with respect to the due process arguments raised by Lloyd Carr and British American?

MR. LEVIE: Objection. The best evidence here would be the transcript.

JUDGE PAINTER: Sustained. I am sure Mr. Hecht, you were present and the staff but this witness is not here to testify what took place in Judge Knapp's court.

MR. HECHT: If that is the Division's objection, do they have any objection if I file the transcript as an after-filed exhibit of that hearing?

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MR. LEVIE: If you file the entire transcript we have no objection.

JUDGE PAINTER: How long is the transcript, Mr. Hecht?

MR. HECHT: I think it is a little over a hundred pages, of that hearing. That is why I suggested it this way.

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JUDGE POINTER: Did you want to file the entire 100 pages, do you, Mr. Levie?

MR. LEVIE: Your Honor, the alternative to that procedure is to have Mr. Hecht designate those portions he deems appropriate and just like filing a joint appendix, we would cross-designate those portions we feel appripriate.

In all frankness, I don't think the full hundred-page transcript would so over-burden the record that it would be that onerous upon the Commission.

JUDGE POINTER: With a degree of reluctance, Mr. Hecht, I will admit into the record that transcript.

MR. HECHT: Do I have authority to file this as an after-filed exhibit since it's up in New York?

JUDGE POINTER: Stipulated?

MR. LEVIE: Yes, with the understanding again that it's the entire transcript, no deletions, no additions, no comments.

JUDGE POINTER: Under those circumstances, it will be admitted into the record when you submit it to me. I assume this will be shortly after the hearing concludes.

MR. HECHT: I will call up right now; if I can get it before I will.

I should point out to Mr. Levie with respect to the rest of the proceedings in this matter before the Second Circuit, they do not make transcripts. Are you aware of that?

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The Second Circuit does not make transcripts?

JUDGE POINTER: All right, let's move on with the witness.

BY MR. HECHT:

Q Going back to when you became associated with Lloyd, Carr & Company, how old was the company when you became associated with them?

A. About a month old.

Q Did they have a formal training program at that time?

A. Yes, Jim was teaching most of the classes then.

Q What did you do to familiarize yourself with commodities?

A. Well, we had discussions with Jim, sat down, discussed how options worked, how they were traded in London. I had spent previous to that maybe a total of 40 or 50 hours in the Harvard Business Library absorbing all I could on commodities, history of changes. There was not exactly a wealth of information on option trading. Probably the only book that is coherent is Zeig's book.

Q Is that Kerman Zeig?

A. Kerman Zeig.

Q Do you recall what happened after December 10 with respect to Lloyd, Carr when you were next contacted by me or other counsel in that case?

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A. Now this was prior to going before Judge Feinberg.

Q. Yes, prior. Do you recall receiving from me with respect to --

A. Oh, about the letter?

Q. Okay.

A. Yes. Charles had called us I guess on a weekend, said he had received a letter from the CFTC which they were going to use in court saying that we had been informed of things that were missing in our application for an FCM.

Q. Do you recall being advised --

MR. LEVIE: Objection. He is leading his own witness, Your Honor. What was the substance of the conversation.

JUDGE POINTER: Leading questions may impair the testimony to some extent, but on occasion it moves the matter along a little faster.

Mr. Hecht, with that in mind, proceed with your leading question.

BY MR. HECHT:

Q. Did you ever become aware the CFTC had advised the court Lloyd, Carr had never filed an application?

A. No, not until you told us.

Q. Did I tell you in person or on the phone?

A. This was done by phone.

Q. What happened next?

A. Well, we scrambled around, Jim and I went down to the office, pulled out our records of our application, the dates they were filed, copies of canceled checks that had gone down with the application which had been dated and I brought them down to you.

Q. Did you bring them down to me pursuant to the instructions of Mr. Carr?

A. That is right.

MR. HECHT: Your Honor, do you have the official file of the exhibits?

JUDGE POINTER: I do, Mr. Hecht.

MR. HECHT: And do you have in there Division of Enforcement's I believe Exhibit 9? Isn't that a copy of the application?

Let the record reflect that I am showing Mr. Cosulich Respondent's Exhibit 10 which is a two-page document with respect to the photostat -- it's a two-page document with respect to the photostat of the front and back of a check dated September 29, 1976 payable to the Commodity Futures Trading Commission.

I ask the witness if he can identify this document.

THE WITNESS: Yes, this is a copy I made I believe of the check that we had on record that had been sent to the CFTC.

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BY MR. HECHT:

Q To your knowledge, does the company still have possession of that canceled check?

A. I certainly hope so.

Q Let the record reflect that I am showing the witness Division of Enforcement's Exhibit 9-A, which is a photostatic copy of the application of Lloyd, Carr stamped as received on October 1, 1976 at 1:07 p.m., and I note for the record it has already been clarified that it was subsequently refiled on the last page a date was put in, the same application on January 17.

I ask the witness if this is a copy of the document he brought down to court, at least the first three pages?

A. Yes, this is it.

Q And to your knowledge were those documents filed with the Second Circuit Court of Appeals?

A. To my knowledge they were.

Q Did you attend the oral argument down there on January 17 where a stay was requested?

A. Yes, I did.

Q Were you in attendance throughout the entire proceeding?

A. Yes, I was.

Q And you were sitting in the audience?

A Yes.

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Q Would you state for the court what was said at that hearing?

MR. LEVIE: Objection. The best evidence ruling again would be a transcript, secondarily, Your Honor, I would ask for a proffer on the relevancy of this evidence.

JUDGE POINTER: Sustained.

MR. HECHT: There is no transcript made by the Second Circuit.

JUDGE POINTER: Mr. Hecht, I am more interested in evidence concerning the allegations made in the complaint rather than the various court actions that have been initiated concerning this matter.

MR. HECHT: Your Honor, I think it's extremely relevant because the CFTC made certain representations to that court with respect to the processing of Lloyd, Carr's application, and Lloyd, Carr had a right to rely on those representations made by a lawyer for the CFTC in court, and that is all he is testifying to.

I can state for the record the Second Circuit does not make transcripts of oral argument.

JUDGE POINTER: The fact is we are going to get into the position where someone is going to suggest supboenaing the Presiding Judge of that court and I don't want to get into that bind.

MR. HECHT: No, it's not that, but there were certain representations made by Mr. Spindel of the General Counsel's Office specifically relating to the processing of Lloyd, Carr's applications, there were certain instructions issued from the Bench to Mr. Spindel as an attorney for the CFTC of what actions they were to take and Mr. Spindel clearly stated those actions would be taken.

I think as part of the record, since this concerns the processing or lack thereof of Lloyd, Car's registration application, this must be made part of the record.

JUDGE POINTER: Ask the questions. I don't want to spend more than five minutes on this, Mr. Hecht.

MR. HECHT: Your Honor, --

JUDGE POINTER: I don't want to get involved in having you bring witnesses in to tell me what transpired in another public forum. I think the charges in the complaint are quite specific and I would like for you to limit your evidence to the charges made against Lloyd, Carr & Company.

MR. HECHT: And one of the charges, Your Honor, is that they were doing business while not yet registered and this relates directly to what they represented to a Federal Circuit Court of Appeals about the processing.

JUDGE POINTER: I will give you five minutes on it, Mr. Hecht, and then we are going to move to whatever these witnesses have knowledge to what relates to the complaint.

MR. HECHT: I think this relates directly to the complaint.

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Your Honor, I now hand to the witness, and am getting back, Division Exhibit 10 marked for identification, which is a form letter from the CFTC, and I ask the witness if he has ever seen this letter, and if so, when did he first see it?

THE WITNESS: This is the letter that you showed me in court.

BY MR. HECHT:

Q Do you recall that during that argument before the Second Circuit Mr. Spindel stated that the CFTC had sent out a letter --

MR. LEVIE: Objection, he is leading his witness again.

JUDGE POINTER: If you would refrain --

MR. HECHT: He has given me only five minutes. I can't have it both ways.

JUDGE POINTER: Mr. Hecht, please address your remarks to me and not to Mr. Levie.

I want only to lead where it will save time, and in this particular instance he has the right to use it. Take your time, Mr. Hecht, ask your question again.

MR. HECHT: Your Honor, the Division took eight days to put on its case and I think the respondents should be permitted a reasonable amount of time.

JUDGE POINTER: In that eight days we accomplished

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732 pages of transcript.

State your question again.

BY MR. HECHT:

Q Do you recall what Mr. Spindel stated to the panel that heard the stay argument with respect to Lloyd, Carr's application?

A He said that we had received a letter of deficiency, these were his words, upon receipt of our initial filing. I opened all the mail that comes into Lloyd, Carr with Jim Carr and I will state unequivocally we never received this letter. I have no knowledge of this letter nor did Jim until Charley gave it to us.

Q And do you recall --

A I almost got thrown out of court for that one.

Q Do you recall Mr. Spindel representing to the Second Circuit which applications were not being approved and why?

A Yes. He gave a list of maybe 8 or 8 dealers who had not been registered and he broke them into a couple categories, one, they were being investigated for fraud; 2, they had not adequate capital; and 3, they had not completed their registration papers.

Q Lloyd, Carr wasn't mentioned?

A No, in none of the categories.

Q Did the court specifically ask, do you recall if the court specifically asked Mr. Spindel what the CFTC was doing about Lloyd, Carr's application?

A. Yes, he said what about Lloyd, Carr and Company?

Q. Do you recall which Judge it was?

A. Yes, I think it was Judge -- the one on the left, Judge Gurfein.

Q. You don't recall the name of the Judge?

A. No, it was the one on the left.

Q. What did Mr. Spindel say in response to the Judge's direction?

A. He said they were completing our application but it's still doing business and you related yes, they are, he said there is no problem.

Q. Do you recall Mr. Spindel stating anything about any problems with the application of Lloyd, Carr?

A. No, none at all.

Q. Did he so advise the court, that they didn't anticipate any problems with Lloyd, Carr's application?

A. Those are almost his words.

Q. Do you recall him stating to the court that so long as the company's,the personnel were fit and that the company met the minimum capital rule.

A. He said as long as they pass fitness and we had the money to do business, he saw no problems whatsoever.

Q. Do you recall when you next went to court to hear oral argument on the regulation litigation?

A. That was before Governor Meskill and Judge Feinberg and Judge Gurfein.

Q. Do you recall when that was?

A. It was in February sometime.

Q. Getting back to the other one, was the stay of Lloyd, Carr or its application for a stay granted?

A. No.

Q. And getting back now to the second time, or the other time, as you were in attendance at that oral argument before Messers. Feinberg, Gurfein and Meskill, do you recall the court directing any questions to me or to Mr. Spindel with respect to whether or not Lloyd, Carr and British American were still doing business?

A. Yes, that was Judge Gurfein.

Q. Do you recall what he said about the fact that British American and Lloyd, Carr were still doing business?

A. What he said about that?

Q. Yes.

A. I recall him asking if we were still doing business and you relating yes, they were. I felt the reason he had asked that question --

MR. LEVIE: Objection as to what the witness felt.

JUDGE POINTER: Sustained. Just state what you know rather than what you felt.

THE WITNESS: Well, that is what I heard.

BY MR. HECHT:

Q Do you recall a discussion with respect to the action relating to Lloyd, Carr before Judge Toro in Boston at that hearing? Was the court advised?

MR. LEVIE: Objection. Here we have a transcript.

JUDGE POINTER: We will hear the witness. Overruled.

BY MR. HECHT:

Q Was the Second Circuit advised of the pending action against Lloyd, Carr in U.S. District Court in Massachusetts?

A Yes.

Q Were they given all the information of who was the Judge and what the result was?

A Yes.

Q Do you recall the court stating well, their TRO is denied so we assume you are still in business?

A Yes.

JUDGE POINTER: It would sound better if you would refrain from leading him too much, Mr. Hecht, because it does begin to sound like your testimony.

THE WITNESS: Your Honor, may I say something? I took rather extensive notes at these hearings for our Board meetings, and I have not been able to get the notes because I came down on such short notice. So the only reason he is doing this --

JUDGE POINTER: I know Mr. Hecht is refreshing your memory, but on the record it will appear Mr. Hecht is putting the evidence in the record and you are simply verifying the veracity of it.

MR. HECHT: Try to do the best you can.

BY MR. HECHT:

Q Do you recall the discussion between the court and the CFTC with respect to the registration provisions?

A Yes. Judge Gurfein asked him, Mr. Spindel, when the deadline for registration was three times. He asked him was January 17 the deadline for filing regustration and Mr. Spindel said no, that is when they had to be registered.

He said when was the deadline for filing the registration and Mr. Spindel said sometime prior to that. He goes when was the deadline for filing -- he was trying to pin him down to an exact date, like everybody else was. He said it clearly states in the Federal Register you had to file your application in time before January 17.

Q When did you first become aware of Judge Knapp's initial decision?

A As soon as you called us.

Q Was that at the end of December or beginning of January? Do you recall when?

A No, not specifically.

Q Did Judge Gurfein or Mr. Spindel say anything about this suggestion of CFTC of when to file, do you recall?

A Yes, Judge Gurfein made a remark stating that it didn't seem that clear to him when the deadline for registering was. I took it to be a facitious remark on his part on the basis --

MR. LEVIE: I move the answer be stricken.

JUDGE POINTER: Refrain from such answers.

BY MR. HECHT:

Q Irrespective of the fact Lloyd, Carr is not yet registered, have they attempted to comply with all of the requirements of the new rules even though they are on appeal?

A Yes, we have, absolutely. May I make a statement?

JUDGE POINTER: As lon as it is not going to be an opinion.

MR. HECHT: I have no further questions.

JUDGE POINTER: Any cross, Mr. Levie?

MR. LEVIE: Yes, Your Honor.

CROSS-EXAMINATION

BY MR. LEVIE:

Q Mr. Cosulich, are you a lawyer?

A No.

Q Did you ever go to law school?

A No.

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Q You have indicated you took copious notes during these court hearings, is that correct?

A That is correct.

Q Did you take them during the hearing before Judge Knapp?

A Yes, I did.

Q Did you take them in the hearing before the Second Circuit on the stay?

A Yes.

Q Did you take them before the Second Circuit on the hearing on the merits of the appeal from Judge Knapp's decision?

A That is correct.

Q And if I understood your comments during your direct testimony, you don't have these notes with you today, correct?

A That is correct.

Q Did you talk to Mr. Hecht about your testimony today before coming here?

A Excuse me?

Q Did you talk with Mr. Hecht about your testimony before coming here today?

A Yes, I did.

Q Did he tell you what questions he was going to ask?

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A. No, he didn't.

Q. Did he ask you what you remembered from these hearings?

A. Yes, he did.

Q. So you are testifying from memory here today, is that correct?

A. That is correct.

Q. You have indicated you saw Division Exhibit 10 for the first time sometime in December?

A. Yes.

MR. HECHT: Objection to the form of the question. Division Exhibit 10 is what?

MR. LEVIE: The document in front of the witness.

MR. HECHT: If you said January you mischaracterized his testimony.

JUDGE POINTER: No, he stated December.

BY MR. LEVIE:

Q. I believe the question was, sir, you saw Division Exhibit 10 sometime in December?

A. Correct.

Q. Did Mr. Hecht tell you were he obtained a copy of Division Exhibit 10?

A. He said it had been filed in a court as part of a complaint by the CFTC about our registration.

Q. Do you recall the specific date in December when

Mr. Hecht told you this?

A. No, I do not.

Q. What action did you take -- strike that question.

A. We duplicated all registration materials that we had on file.

Q. So sometime in December then --

MR. HECHT: I am going to object, Your Honor. I checked carefully and he said January.

JUDGE POINTER: I clearly heard December.

MR. HECHT: That was with respect with before Judge Knapp.

JUDGE POINTER: Any confusion has been removed now. I understood it clearly to be December.

MR. HECHT: I note my objection for the record.

JUDGE POINTER: Proceed, Mr. Levie.

BY MR. LEVIE:

Q. So sometime in December, Mr. Cosulich, you knew that the CFTC had not processed the FCM 78 application of Lloyd, Carr Financial Company, correct?

A. I knew that we have never -- that they said we have received a copy of this letter and I knew we hadn't. That is what I knew.

Q. The question, Mr. Cosulich, was at the time you saw Division Exhibit 10 --

A. Which is this?

Q. That is correct.

There was in the possession of Lloyd, Carr & Company the original application filed on October 1 with the Commission for FCM registration of Lloyd, Carr Financial Company, correct?

A. Right.

Q. So sometime in December, based on the fact that Lloyd, Carr Financial Company still had the original application and now Mr. Hecht had pointed out to you the presence of Division Exhibit 10, the company knew --

A. Wait a minute, wait a minute, we didn't have the original. We had a copy of our application.

Q. Please hear my questions.

JUDGE POINTER: Listen to the questions and respond if you can.

BY MR. LEVIE:

Q. Is it your testimony then, Mr. Cosulich, that Lloyd, Carr Financial Company did not receive back from the Commission the application originally filed on October 1?

A. No, I was discussing this, this letter of deficiency. We had not received this.

JUDGE POINTER: Listen to the question carefully and attempt to answer it.

MR. HECHT: He did, Your Honor. He did answer it, he said what he was referring to even though Mr. Levie

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mischaracterized the question.

BY MR. LEVIE:

Q. Mr. Cosulich, in December Lloyd, Carr Financial Company had the original application filed on October 1 in the possession of Lloyd, Carr Financial Company, correct?

MR. HECHT: Your Honor, I am going to object. That is outside the scope of the direct and he is putting words into his mouth.

JUDGE POINTER: Overruled.

I am interested in the answer.

MR. HECHT: Do you know? Tell what you know.

THE WITNESS: Yes, we had the application, the original application.

BY MR. LEVIE:

Q. And also in December you received a copy of Division Exhibit 10, correct?

A. A copy of this, you are referring to?

Q. Division Exhibit 10, yes.

THE WITNESS: Did you send a copy of this up to us, do you remember?

I remember seeing this in New York when I came down.

BY MR. LEVIE:

Q. When did you come down to New York?

A. With a copy of the check and our application.

Q. When was that?

,m20

A Immediately following our phone conversation with Mr. Hecht.

Q When was the phone conversation?

A It must have been toward the end of December -- January.

JUDGE POINTER: No coaching. Answer the question if you can.

THE WITNESS: Your Honor, I am trying to remember the dates. The dates are not that clear in my head. We have been in and out of court so many times.

JUDGE POINTER: Just do the best you can.

THE WITNESS: That is the best I can do. Sometime in late December or early January.

BY MR. LEVIE:

Q Did you make notes of your conversations with Mr. Hecht?

A Did I make notes of my conversations with Mr. Hecht?

Q Yes.

A No.

Q Do you keep a diary of when you make trips to see Mr. Hecht or go on company business?

A I keep a diary when I go on company business.

Q So sometime in December Mr. Hecht told you about the existence of Division Exhibit 10.

MR. HECHT: Objection. You are putting words, what

I said which is not in the record, I object to the form of the question.

JUDGE POINTER: Overruled. The witness can very easily answer yes or no to that question, Mr. Hecht.

MR. HECHT: Well, Your Honor, it's a four-part question.

JUDGE POINTER: I didn't hear the four parts but I will hear Mr. Levie repeat it again.

BY MR. LEVIE:

Q Sometime in December 1976 Mr. Hecht informed you of the existence of Division Exhibit 10, correct?

A. That is correct.

Q Knowing as you did in December that Division Exhibit 10 existed and that Lloyd, Carr Financial Company had the original of their FCM application still in their possession, why did Lloyd, Carr Financial Company wait until January 17 to refile their FCM application?

A. I can't answer that question.

Q You testified that Lloyd, Carr has attempted to comply with all rules and regulations even though not registered, correct?

A. That is correct.

Q And you are familiar with the regulations, are you not?

A. As much as anybody is.

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Q Then you are also familiar with Regulation 32.3 which requires all persons selling options to be registered as FCMs on January 17, 1977, correct?

A. I am familiar with it.

Q And yet with this knowledge, is it your testimony that Lloyd, Carr Financial Company, and then Lloyd Carr & Company, continued to sell options after the 17th without being registered?

MR. HECHT: I want to object on the record. He is mischaracterizing the question. The question was carefully put exclusive of the registration provisions. I believe it was.

JUDGE POINTER: I think we have gone over this point with so many witnesses and we have heard extensive testimony from Mr. Carr concerning this matter, Mr. Levie, is there an additional point you can make on this?

MR. LEVIE: If you can just get an answer on this I will move on.

JUDGE POINTER: I will overrule the objection on the last question and answer it if you can.

THE WITNESS: Yes.

BY MR. LEVIE:

Q When you heard -- I have no further questions, Your Honor.

JUDGE POINTER: Fine. Any redirect?

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MR. HECHT: Yes.

REDIRECT EXAMINATION

BY MR. HECHT:

Q Is it possible you could have seen this letter after January 17 when Mr. Spindel brought it to the court's attention?

MR. LEVIE: Objection to what is possible. He can testify to what he did.

JUDGE POINTER: Testify what you know.

BY MR. HECHT:

Q As a result of your testimony today, does it refresh your recollection that this letter was received after the motion for stay was denied?

A. Okay. Can I make a blanket statement since we have two attorneys fighting for points.

JUDGE POINTER: Your privilege.

THE WITNESS: The first time I saw this was when Mr. Hecht gave it to me in New York.

JUDGE POINTER: When was that, sir?

THE WITNESS: Your Honor, I can't state unequivocally the date because I honestly do not remember the date. I don't know whether it was during the hearing on the stay or the hearing before the Second Circuit. As I stated to Mr. Levie, I am not an attorney and I am not --

JUDGE POINTER: So you received this or knew of it sometime in late December or early January and that is the

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best you can do?

THE WITNESS: That is the best I can do, Your Honor, that is the truth..

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BY MR. HECHT:

Q Were you aware the CFTC went into court in Boston on or about February 8 in an attempt to put Lloyd Carr out of business?

MR. LEVIE: Objection, beyond--

JUDGE PAINTER: Sustained.

MR. HECHT: He asked the question--

JUDGE PAINTER: Ask about the court action and not necessarily the results of it, Mr. Hecht. I don't know what you are driving at but there was a court action on February 8. Ask him what he knows about it.

BY MR. HECHT:

Q Are you aware of the CFTC filed an action in the United States District Court for Massachusetts in February before Judge Toro?

A Yes, I am.

Q What was your understanding of what the CFTC wanted?

A It was my understanding that they wanted to go into court and shut us down immediately and wanted to take all our books and records, put us into receivership--just an incredible amount of harassment.

Q And do you know what the results of their application were?

A Yes, Judge Toro threw them out of court.

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MR. HECHT: I have no further questions.

JUDGE PAINTER: Will that be all the testimony from this witness?

MR. LEVIE: I have nothing further.

JUDGE PAINTER: You are excused, sir.

(Witness excused)

JUDGE PAINTER: Shall we take a five-minute break here?

(Whereupon, the hearing was recessed from 11:00 a.m., to 11:10 a.m., of the same day.)

JUDGE PAINTER: On the record.

Mr. Hecht, your next witness?

MR. HECHT: Is John Gill.

Whereupon,

JOHN GILL

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was called as a witness on behalf of the Respondents and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HECHT:

Q Mr. Gill, could you please state your full name for the record?

A John T. Gill.

Q How do you spell Gill?

A G-I-L-L.

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Q What is your present occupation?

A A broker with sales responsibilities and an adviser with communication responsibilities with Lloyd, Carr and Company.

Q When did you become associated with Lloyd, Carr and Company?

A July '76.

Q And prior thereto what did you do?

A I was a marketing vice president for a consultant firm in New York specializing in marketing and design communications.

Q How many years?

A Eight years.

Q And before that?

A Brand management in New York with a cosmetic firm for a year and with a toiletries firm in brand management for seven years.

Q Did you go to college?

A Yes.

Q What college?

A Holy Cross.

Q Did you graduate?

A Yes.

Q What did you get a degree in?

A Political Science.

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Q And when you came to Lloyd, Carr and Company did you participate in a training program?

A Yes, I was in the first class at Lloyd, Carr.

Q Was this a formal class or an informal class?

A Basically formal. Much of it was informal conversation. These were the very early days at Lloyd, Carr. We were beginning to formulate concepts and procedures.

Q And do you recall who the lecturers were at the first training program?

A Jim Carr and the manager who was there at the time, I can't recall his name today.

Q Do you recall how long it was?

A About three and a half days.

Q Do you recall what was discussed at these training programs?

A Yes, basically the whole concept of options, how they work, how they differ and compare with futures trading, the whole range of markets in the London markets and telephone technique and presentation of sales.

Q To your knowledge does Lloyd Carr and Company still have a training program?

A Oh, yes.

Q And are you a lecturer at that traning program?

A I am.

Q What do you lecture on at that training program?

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A Basically sales communications with emphasis on telephone technique.

Q How long a period is this training program now?

A A full week.

Q Is that classroom work a week?

A Yes, basically. They don't really get on the phones until the second week.

Q And during the second week what does the training program consist of?

A Very structured early days of telephone technique. They are making calls for the first time. They are constantly monitored of course for a period of a week to 10 days. As they move into sales.

Q Are you one of the persons at the company that does the monitoring?

A Yes.

Q Would you explain for the court what kind of monitoring system Lloyd, Carr has set up?

A We have a key set that cuts into every phone in the house and you can random monitor any one of the brokers. We do this of course to maintain controls in terms of accuracy of the presentation, competence in terms of the markets and the supporting evidence to document a particular recommendation.

Client relations in terms of the enthusiasm of

6 the broker, is he communicating on a level with the clients, particularly the new sector.

Q And in the course of your lecture, getting back to that, in the general area that you lecture on about how many hours during that training program do you give lectures?

A It runs about a day. Basically taking the backing to the whole notion of the sales techniques we use. For most of the new brokers the training and background has been what I described as visual sales, one on one, and all the kinds of body language related to direct sales in person are quite different on the telephone where you move into a client's office to sell him a product or you are into a committee presentation to sell an entire committee. It is basically a visual presentation. You shake hands, you establish the amenities, you present your product, you answer questions and objections. But it is a total kind of visual thing and typically brokers and salesmen today have experience and background in that kind of environment. But here in option sales they have to take all that, compress it through a phone. So technique is quite different and I do tend to get into them probably four days into the training with the notion of how to reach the client in terms of introduction over the phone, basic recommendations, market knowledge to support the recommendation and of course the whole area of cost and closing a client, and the mechanics of how an option works, cost of the option, break-even risk and the reward factors. That in broad terms is how I approach it.

JUDGE PAINTER: I don't want to interfere with your questioning here. Mr. Hecht, but I want to point out again that I see nothing in the complaint to indicate that the employees of Lloyd, Carr and Company were not well trained people, and I see nothing in the complaint to suggest misrepresentation, fraud or other areas. I am sure Mr. Levie would not be willing to stipulate such has not occurred but he may be able to stipulate he has no knowledge of any such matters.

MR. HECHT: Well, Your Honor, one of the problems in this case is that the Division of Enforcement has taken an all or nothing approach, and I think it is a very important factor for the Commission to consider whether or not that is a well-run business from a sales point of view. I think that is a factor that we have to put into the evidence, especially under the circumstances surrounding this type of hearing, and I think it is a factor that the Commission should be in a position to consider in deciding what sanction if any to impose.

JUDGE PAINTER: You can have some leeway here. Again, I don't think it deals with the issues that we are concerned with and I think that Mr. Levie might be willing to stipulate that they have no knowledge of improper activities in the field of sales or training of the employees.

But go ahead with your questions.

MR. HECHT: Your Honor, I think it is important for that reason.

JUDGE PAINTER: Put it in.

BY MR. HECHT:

Q To your knowledge does any other commodity option dealer have this kind of training program?

A To my knowledge, no.

Q To your knowledge, have other dealers called Lloyd Carr and Company and asked them about their training program?

A They have not asked me personally, they may have talked with Jim Carr.

Q Do you have any knowledge if they talked with Jim Carr?

A About traning specifically? No.

Q How often a week does the company have meetings or marketing meetings to discuss the technical aspects of options?

A This is probably unique, you know I met brokers from I guess 10 or 12 of the options firms here in the East. We tend to do it a little differently, and perhaps that is why we are doing as well as we are. Basically every day

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opens 9:00 o'clock sharp and every broker is there and it is what we describe as a market meeting, essentially where the market has been, where we think it is going on a daily basis, what has happened overnight in London. As you all know London opens at 5:00 a.m. our time so we are out some four or five hours. At that point we have already established trends in a particular market for the day.

In addition of course there is sales motivation and direction to get the people moving, get them up, build enthusiasm. Roughly it takes about a half-hour. It occurs every day of the week and every broker is there. It makes his day because without the background in market knowledge he has kind of lost that input to get him going that day.

Q And does the company have a philosophy or approach with respect to the sale of short-term or long-term options, and if so would you describe it?

A Yes. The position essentially is prime recommendation is long-term position. Why? Because there is more security, which means less risk. That is not to say though that short-term positions in strong running markets are not viable, they are. We have done that in coffee successfully for many months and I can't think of any exceptions that clients lost in either short or long-term positions throughout the entire year of '76. When you have volatile markets on the move, real fundamental problems in the markets such as

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coffee and four national disasters and a ware in one year, you have a very solid basis for short-term and long-term recommendations.

Typically though where you have markets turned sideways like the sugar market, short-term positions, don't really make any sense.

JUDGE PAINTER: Mr. Hecht, I will have to ask you to move along with questions concerning the issues raised in the complaint.

MR. HECHT: Your Honor, I still feel that as an attorney in this kind of proceeding especially, in view of the relief requested by the Division, it is incumbent upon me to put in evidence of the nature and scope of the operation so that the Commission is in a position if they find that the Division of Enforcement has stated a valid cause of action and proved it, of what the appropriate sanction is.

JUDGE PAINTER: Mr. Hecht, let me repeat again. I have heard Miss Shaffer testify, Mr. Shuster testify, and Mr. Garvanne. These seem to be well-educated people. I saw nothing to reflect on the manner in which you have run your training programs. Let's assume that all that is in order for the purposes of this proceeding. But we are going far afield here. You haven't been charged with improper training of personnel or the matters you are having this witness testify to this morning.

MR. HECHT: Your Honor, all of those witnesses were, believe it or not, the staff's witnesses.

JUDGE PAINTER: I am aware of that Mr. Hecht, I am cogently aware of that. I am saying the evidence has not shown, the way I interpret it, such things as fraud, misrepresentation, poor training and the like.

MR. HECHT: Your Honor, that is true. Let me ask you this question. Do you feel that under the terms of the complaint in this case that the Division could possibly come to a middle ground and not order cease and desist but could order a censure or light sanction?

JUDGE PAINTER: I intend to go into a discussion with you and Mr. Levie about this when we end the morning session. I intend to ask you gentlement to be patient and we will take five minutes when we recess for lunch and I will discuss that at that time.

Any more questions of this witness?

MR. HECHT: I have been really prohibited from asking them, Your Honor--

JUDGE PAINTER: I simply want you to refrain from going into the training program. As I understand it you haven't been charged with poor training.

MR. HECHT: Well, Your Honor, I think the Commission is entitled to know this is in certain areas one of the best run commodity option dealers, if not the best run

12 in the country. I think if they permit certain dealers who everyone knows run a roughshod operation to stay in business, why have they come after Lloyd,Carr. I think it raises a serious, serious question of why they have come after Lloyd, Carr when everyone knows these facts.

JUDGE PAINTER: I am sure again we have enough in the record Mr. Hecht, to show the way you think the business is being run and you are certainly not being charged with the things you are trying to defend against here.

MR. HECHT: I am not defending. This is evidence on mitigation--

JUDGE PAINTER: Mr. Levie; you'd be willing to stipulate you have no knowledge of improper conduct of matters Mr. Gill has testified to this morning?

MR. LEVIE: Absolutely not, Your Honor. No, sir, I have evidence of fraud.

MR. HECHT: It is not alleged in the complaint.

MR. LEVIE: And you will note the Division has not put forth such evidence in its case and it is not in the complaint.

MR. HECHT: I move that Mr. Levie's comments be expunged, that they have evidence of fraud. I think it is prejudicial and I think it is totally improper.

JUDGE PAINTER: I will order the remarks stricken. Expunged means a scissors and paste job and I am very reluctant

13 to use the scissors and paste on a transcript prepared by a Reporter. I order the remark stricken and the fact that it is stricken will suffice.

MR. HECHT: Okay. I think that could render the whole proceeding moot because I think it is highly prejudicial and improper.

I have no further questions of Mr. Gill.

MR. LEVIE: I have no questions of this witness.

JUDGE PAINTER: You are excused, Mr. Gill.

(Witness excused)

JUDGE PAINTER: Off the record.

(Discussion off the record)

JUDGE PAINTER: On the record.

MR. HECHT: I would like to move at this time for admission of Division Exhibit 10, and I also want to point out that Mr. Cooper was going to advise me of who wrote this note here.

MR. LEVIE: We did on the record, Mr. Hecht.

JUDGE PAINTER: Just one moment. Division Exhibit 10 which is being offered by Mr. Hecht, is admitted into the record.

Index (Division Exhibit No. 10 was received in evidence.)

JUDGE PAINTER: We will adjourn for lunch until 1:30.

(Whereupon, at 11:30 a.m., the hearing was adjourned for lunch, to reconvene at 1:30 p.m. of the same day.)

15 AFTERNOON SESSION

1:45 P.M.

JUDGE PAINTER: On the record.

Mr. Hecht, who is your next witness?

MR. HECHT: I believe it is a gentleman named Mr. Paulek.

Whereupon,

Index WILLIAM J. PAULEK

was called as a witness by and on behalf of the Respondents and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HECHT:

Q Sir, would you please state your full name for the record?

A William J. Paulek.

Q Would you prefer to be called Mr. Paulek, William or Bill?

A Bill is fine.

Q Bill, what is your present occupation?

A I am head of the Registration Group in Chicago for the Commission.

Q Now, does that include "FCM" applications or just "AP" applications?

A It includes FCM applications, floor brokers and associated persons.

Q How long have you held that position?

A Since the inception of the Commission, in fact before the inception of the Commission.

Q Was that with the old Commodity Exchange Authority?

A Yes. I guess it was December of '74 or '75 I was placed in charge of processing the associated persons applications.

Q In that connection do you coordinate at all with the Division of Enforcement in processing an "FCM" application?

A I don't believe I understand.

Q Would you describe what your duties are in processing applications?

A Basically I oversee the people who actually process the applications, dictate the terms under which the computer programs which are the measured portion of the registration processing, or the way we control registration, as to how the system should be programmed, what type of logic, what procedures are to be followed.

Q Is Al Cooper of the Eastern Regional Office under your direction and control?

A No, he is not.

Q Witg respect to these commodity option dealers who filed FCM's, was that within your province?

A Only to the extent that they filed FCM applications in my durisdiction.

Q Which is Chicago?

A I think the exact boundaries are anything east of the Mississippi River and north of the Ohio, as far as location of records would be concerned.

Q So if I was an "FCM" and was in Boston or New York I wouldn't file with your office?

A That is correct.

Q Bt if I was an associated person who was employed by one of those FCM's, isn't it correct that would be filed with your office?

A That is correct.

Q What procedures are normally folled by your office in processing "AP" applications?

A That is rather lengthy, I will go step by step. First of all the applications are opendc by the mail room, the mail room is responsible for opening all mail and time stamping the applications. At that point the checks and the applications go to the administrative office where they detach the checks and are responsible for depositing the checks and preparing the schedule of collections for the day.

After this is done the applications are then forwarded to my department at which time they are sorted.

Sorting is rather important because the applications are either new applications or they are renewal applications. We use computer printouts to tell us whether they are renewal applications of new ones. If the name does not appear on the printout it is assumed to be a new application. It is then forwarded to my main clerk who then begins the procedure of reviewing the application for completeness and rejecting the application if it is not properly completed. The applications are then coded, and by coding I mean certain of the information is condensed so it can be placed on computers, things like date of birth, mailing address, condensing it down to two characters rather than having the whole state appear within a computer system.

Certain codes for how much experience the individual has in commodities, what his educational background is and whether he has taken any examination testing his knowledge on commodities, they are all placed in the computer via a computer coding system. It is also cross-referenced to the FCM number which is on the computer. For instance, I am not certain what Lloyd, Carr's number is, I am not certain what it is, I can't remember it. Do you have a copy of one here? 63664 is Lloyd, Carr's computer number. Now that is the number for the FCM" application and how Lloyd, Carr is placed in the computer system by New York. But by putting that number as part of the associated persons application then we know which "AP's" are connected with Lloyd, Carr.

The applications are then photocopied for submission to the FBI for a background check. That is this stamp that appears on this photostat here. That tells us it has been done.

The photostats are air-freighted to the Washington office to expedite the processing as much as possible. It is done on an irregular schedule, usually on Wednesdays and Fridays, or if we are working on Saturdays, so that they will arrive in Washington the next business day.

Q Now this number here, that is the FCM number of a particular company, or the FCM application number?

A Right.

Q Do you know when that number was given to Lloyd, Carr?

A No, I do not. That would be handled through New York.

Q But it would at least be before February 5, 1977, wouldn't it?

A I would assume so but I am not certain.

Q Is there any way to check from your records of when that number was given to Lloyd,Carr and Company?

A No.

Q Would they have a different number if they were for their commodity trading adviser application?

A Yes, they would.

Q So it goes through the FBI and what happens then?

Assume it is favorable.

A Well, first of all you have to back up from there. All right, the applications are then put in a bin, stacked up, no order whatsoever to them. They remain there until the next scheduled computer run, at which time, usually the computer runs on Thursday of a particular week. On Monday afternoon, usually 4:00 o'clock, all of these applications plus any additional computer instructions are sent to an outside contractor for keypunching. They usually arrive back on Wednesday afternoon or Thursday morning. They are then--at this point these instructions are updated on the computer, usually starting around Thursday afternoon and completed sometime on Friday. At this point the computer on all new applications will prepare a file label which looks just like this one here does.

All right, this has basically all of the information concerning the applicant on the label.

Q Does it also have the FCM company it is associated with on the label?

A Yes, just by number.

Q So by looking at a particular file you would know that that person is employed by Lloyd, Carr and Company or British American?

A If you are familiar with the number. You have to [illegible] iliar with the number of have a computer listing tha [illegible] convert the number back to the company.

These labels come out on a glossy piece of paper. They then are peeled off by my staff and pasted on the file folders. First of all I guess we should go back one step. The applications come back from keypunch, they are sorted into first alphabetical order because these labels come out in strict alphabetic order. We then put the applications inside the folder and file them in an in-process file. This whole time, now we are talking about a time frame of anywhere between 10 to 15 days. In Lloyd, Carr's case the applications were received in Chicago on the 26th of January. They were placed on our computer system on February 10.

Now I am not certain, I didn't draw up anything exactly on when they were photostated but if this is representative, it says February 5 was the date they were photostated.

MR. LEVIE: Let the record reflect the witness and Mr. Hecht are referring to Division Exhibit 14.

MR. HECHT: Also a sample of a folder used by the Division's processing.

THE WITNESS: This happens to be one of Lloyd, 22 Carr's applications.

MR. HECHT: Let the record reflect I am going through here and except for the second one they look like they were all photocopied on February 5, 1977.

BY MR. HECHT:

Q Now after they have been photocopied by the FBI, what is the normal amount of time for processing?

A They are not photocopied by the FBI, they are photocopied by us. They are forwarded to the FBI.

Okay, the whole process, normally we state anywhere from 45 to 60 days. Now I have drawn up some figures on Lloyd, Carr's people and some of Lloyd, Carr's people are still not approved.

MR. HECHT: Should we let the record reflect the witness is referring to what looks like a 10-column accounting sheet with some filled-in data?

JUDGE PAINTER: The record should show that Mr. Levie has taken the document for some purpose, maybe he can explain it to us.

MR. HECHT: And is crossing out four names, and I would like to know why that is being crossed out in my presence.

MR. LEVIE: Your Honor, this chart that was prepared by Mr. Paulek contains the names of applicants working with Lloyd, Carr who have applied for "AP" status.

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With four of the individuals certain matters have arisen during the course of the processing which have caused their applications to be held up. In view of the privacy aspects of the Commission's duties in this regard, I do not feel it appropriate that the individuals be identified at this time, or that Mr. Paulek or anyone else from the Commission relate in any further detail the nature of the hold on their application. I can state there is something that has come up that at this point is holding their applications. It is not positive one way or the other how these applications will be acted upon but we feel it would be an invasion of the individual's privacy to reveal their identity or the nature of the interim hold on their applications.

JUDGE PAINTER: Your comments are on the record, Mr. Levie.

MR. HECHT: Your Honor, I am not interested in delving into the private affairs of certain individuals, however, I would like to point out that maybe now Mr. Levie can understand our reluctance to turn over customer names to the Division of Enforcement.

JUDGE PAINTER: All right, now that we have that on the record too let's back to Mr. Paulek.

BY MR. HECHT:

Q Mr. Paulek, do you have any objection if I take a look at this particular list?

MR. LEVIE: May we have this marked at least for identification?

JUDGE PAINTER: Whose exhibit, Mr. Levie's, Mr. Hecht's?

MR. LEVIE: I assume Mr. Hecht's.

MR. HECHT: No.

BY MR. HECHT:

Q Was this prepared in connection with this particular litigation since you were being asked to testify here?

A I did not know I was being called to testify. I was just told to fly in here.

Q When did you prepare this particular schedule?

A I prepared it all day yesterday.

Q And you knew prior to yesterday you were being called as a witness?

A No, I did not.

JUDGE PAINTER: Mr. Hecht, for my enlightenment, would you tell me what that list consists of?

MR. HECHT: I will give you an extra copy.

JUDGE PAINTER: I'd rather have you or Mr. Paulek describe what it is.

MR. HECHT: Why doesn't Mr. Paulek describe it since he did the work.

THE WITNESS: There were 38 applications filed

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by Lloyd, Carr's people, as best I have been able to determine. There may be additional ones which I am not aware of at this time.

JUDGE PAINTER: And this is a list of those applicants.

THE WITNESS: This is a list of those applicants and basically this was an attempt to show approximately how many days it took from the point that these applications were received until the point a computer generated license was issued to the individual.

Basically on an average it took 48 days, 48.4 to be exact.

BY MR. HECHT:

Q Were you aware that on November 15, 1976 Lloyd, Carr became a party in a suit with respect to the Commission's new regulations in commodity option dealers?

A No, I wasn't.

Q Did you ever become aware that they were parties to that litigation?

A I knew that there was a suit against the Commission on the options. Till now I didn't know who the parties were.

Q And are you aware that prior to November 17 that there were "AP" applications made by certain personnel employed by Lloyd, Carr which have been accepted?

A No.

Q Have you checked through the files or attempted to ascertain which persons who had filed before November 17, 1976 had been accepted as "AP's" on behalf of Lloyd, Carr and Company?

A No, I did not make any such search.

MR. HECHT: Let the record reflect that I am handing to the witness a copy of Division of Enforcement exhibit Number 27, and I am directing his attention to the second page thereof where it discusses branch offices.

BY MR. HECHT:

Q I ask if the material thereon refreshes your recollection?

A No, sir. This name does not mean anything to me. It is possible that he is registered as an associated person but there is something like 28,000 associated persons and this name doesn't mean anything to me at all.

Q You mean prior to November 17 Lloyd, Carr was just another name to you?

A I don't even--

MR. LEVIE: He hasn't testified--

JUDGE PAINTER: Mr. Levie. Answer the question if you can.

THE WITNESS: I don't believe I heard of Lloyd, Carr before November.

If this individual had filed an application, it would have been the responsibility of Lloyd, Carr to file an amendment to that application stating that he was now associated tith Lloyd, Carr. I don't know the statutes all that well, whether it would be in effect as of the time Lloyd, Carr made application or after Lloyd, Carr was approved.

BY MR. HECHT:

Q That was I believe the time they made application and it was noted on there Mr. Labus had already been accepted as an associated person, the date he was accepted. I think it is right on the application, isn't it?

A But it would have been a matter of Lloyd, Carr filing a 3-R with the Commission in Chicago relative to that individual for me to become aware of it.

Q You mean a form like that wouldn't have made you aware of it?

A No, because I just don't see the "FCM" applications of New York.

Q Or Boston?

A No.

Q Just the AP. And isn't it a fact that prior to March 11, 1977 none of the licenses were issued?

A I believe that is true, yes.

Q Are you aware that on March 9 when this hearing began that I had raised the point in the hearing that why hadn't any of the "AP" applications of Lloyd, Carr and Company's employees been accepted?

A No, I was not aware.

Q Did you ever discuss it with anyone?

A I discussed it with Mr. Levie, I am not certain of the time frame.

Q Could have been before March 11, couldn't it have been?

A It was sometime after this hearing began.

Q But it was before March 11, wasn't it?

A I do not know. I believe if you want to go back to this schedule, the third column of this schedule mentions the date it was coded. This is the computer instructions to approve the individual. If one of Lloyd, Carr's individuals or if Lloyd, Carr would have called us, we would have told them that on January 2 or January 3 we had received the last of the background checks on the individual, as far as we were concerned he was approved and that license was a formality, that would be coming out the next time we updated our computer system which in this case was March 11. So actually these people were approved on March 3, some of them on March 5, when the third FBI report aor the third background check came back on the individual, then he would have been approved.

Q Do you recall receiving a call from a gentleman

29 named Hank Mann of Commodity House in Boston?

A No, sir.

Q Does the name Leon Boole ring a bell to you?

A I believe he is on the schedule here. Yes, he is.

Q Are you awqre that he subsequently left Lloyd, Carr and Company and became associated with a competitor?

A I believe that is in his file.

Q And isn't it a fact that he was called--do you recall receiving a call from someone at First Commodities Corp., saying that two brokers from Lloyd, Carr had left Lloyd, Carr and had come over to First Commodities?

A No.

Q Who else in your office could have received that kind of call?

MR. LEVIE: Objection, calls for speculation.

JUDGE PAINTER: We will hear the answer if he has it. Who would have answered such an inquiry?

THE WITNESS: Could have been anyone on my staff.

BY MR. HECHT:

Q How many people does your staff have?

A I have four people under me presently.

Q Do you recall discussing this with anyone on your staff?

A No.

Q Is it normally the policy of your staff to advise people that they have been orally approved?

A If we receive a telephone call requesting that information, yes.

Q But you don't recall any telephone calls with respect to Mr. Boole?

A We receive so many telephone calls daily that we lately have been discouraging them as much as possible by not accepting them.

Q Are you aware that the Commission issued a release that applications received after December 27 would not be processed as promptly as the prior applications?

A I don't think that is what the release said.

Q What did the release say?

A I don't really remember now but I believe it had something to the effect that certain individuals--there are several of them so I get them confused all the time. You are referring to December 27, right?

Q Right, the cutoff date.

A I think they were given a no action position but I don't remember the wording of it now because there is something like five or six no action positions.

Q You mean they have switched positions a number of times?

A They have extended the no action position to cover additional people under certain conditions.

Q Isn't one of the prerequisites those people have to stop working in order to get a no action letter?

A I think that is a different no action one. I don't remember them all but I think that is the second no action one, something about not having to work after January 17 and giving an affidavit to that effect.

Q How would you like not working for three weeks while someone was waiting to approve you?

MR. LEVIE: Objection.

JUDGE PAINTER: Sustained.

BY MR. HECHT:

Q With respect to this December 27 cutoff date, did you participate at all in the decision fixing that date?

A No, I did not.

Q Were you aware of why the decision was made for that as a cutoff date?

A No, I wasn't.

Q Did you ever receive any instructions to put a hold on--isn't it a fact you received instructions to put a hold on all of the "AP" applications of Lloyd, Carr and Company?

A No, that is not true.

Q And you never spoke to Mr. Levie before you spoke

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to him on the 11th of March, or 12th of March or 9th of March?

A I have spoken to Mr. Levie many times in my capacity with the Commission.

Q And did you ever discuss Lloyd, Carr with him prior to then? In fact you did, didn't you?

A I really don't recall.

Q How about Michael Stewart with respect to Lloyd, Carr?

A I have only had limited dealings with Mr. Stewart. I think I may have only talked to him once or twice, I am not certain.

Q Was that with respect to Lloyd, Carr?

A I don't think so.

Q But you are not sure?

A I don't know.

Q And looking at your schedule here, when the license is issued that means when the license is mailed out from your office in Chicago?

A That is correct.

Q And normally would get to the people two or three days later?

A That is correct.

MR. HECHT: Your Honor, I just want to take a break for two minutes and study the schedule.

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JUDGE PAINTER: I want to ask Mr. Paulek one question before the break comes up.

Do I understand your testimony Mr. Paulek, that Mr. Leon Boole, whose name apparently was on that list, was treated in the same fashion as all other names on that list, except for four who have been blocked out?

THE WITNESS: Yes.

JUDGE PAINTER: Did all of these people receive approximately the same notification as to their registration?

THE WITNESS: Certain of the people on this list, Your Honor, are not approved yet.

JUDGE PAINTER: Four people?

THE WITNESS: No, there are additional people on here who are not approved also for various reasons.

JUDGE PAINTER: Was Mr. Boole given any preferential treatment on this list?

THE WITNESS: No.

JUDGE PAINTER: That was my understanding of your testimony.

BY MR. HECHT:

Q You said you had no knowledge of any phone calls relating to Mr. Paulek, isn't that correct?

A Yes.

Q And you said you had no phone calls relating to First Commodities Corp.?

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A I probably have talked to First Commodities Corp., at one time or another but I do not remember the conversations.

Q Do you remember calling Hank Mann about the middle of February?

A No, sir.

Q Do you recall advising anyone at First Commodities that since Mr. Boole had just come over that you gave him verbal approval and said his written license would come shortly?

A I do not remember that conversation.

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Q And do you recall anyone from your office advising Mr. Boole or Mr. Mann that the fact that they now are affiliated with a company other than Lloyd, Carr, they were accepted in one day?

A No, I have no recollection of that at all.

MR. HECHT: No further questions.

JUDGE POINTER: Well, one last question from me. The inference in Mr. Hecht's last question, was it true or false, did their status as applicants change as the result of their transfer to another company?

THE WITNESS: It would have no effect on their application at all.

JUDGE POINTER: And it had none according to your records?

THE WITNESS: That is correct.

JUDGE POINTER: Did you want a five-minute recess or ten-minute recess?

MR. HECHT: Your Honor, I had filed subpoenas with respect to Mr. Boole and Mr. Mann to testify on this particular subject and my motion was denied and you granted Mr. Levie's motion to quash.

JUDGE POINTER: I granted the motion to quash, yes.

Mr. Paulek, before we go off the record has a statement.

THE WITNESS: It is not a prerequisite of an

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associated person application that he be connected with any particular FCM per se. So even if this guy was not employed and he came in and filed an application with me, I would consider it and process it and approve it.

JUDGE POINTER: Do you make a distinction on AP applications between an AP applying for work with a registered FCM or applying for work with a person who is not registered?

THE WITNESS: Except for the coding procedure which would indicate he is working for a particular FCM, no other consideration is even made.

So the guy could be employed by no one, could be unemployed and just interested in getting into the commodity field, file an application, give me a check for $20 and if he has nothing in his background of a derogatory nature he will be approved.

JUDGE POINTER: So he is a non-associated associated person at that point?

THE WITNESS: That is correct.

MR. HECHT: I just have a few questions, Your Honor.

BY MR. HECHT:

Q Isn't it a fact if I wanted to see all the AP applications with respect to a particular dealer, I would just once I knew the code number for that dealer it would be a simple matter for me to get them all out?

A I can't say it would be a simple matter because

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I have approximately 30,000 files. I would have to give you a computer listing of that firm and then you would have to physically go and thumb through these 30,000 files and find them.

Q Well, how did you get all these together the Division furnished to me?

A With some difficulty. I had some trouble finding them all, as I had trouble finding all of them basically because there are several places in which these applications are maintained until they are actually approved and sometimes they will get out of alphabetic order through misfiling and so forther.

It took a clerk six hours to pull these applications and have them all for me.

Q With respect to other APs who filed for commodity option dealers, isn't it a fact that the average processing time was substantially less than 48.4 days?

A I have additional schedules that I think we can present here on processing.

MR. HECHT: Can I give a suggestion? Why don't we go off the record so I can study those rather than floundering off the top of my head?

JUDGE POINTER: We will take ten.

(Short recess taken)

JUDGE POINTER: Back on the record.

BY MR. HECHT:

Q Bill, how long does it normally take for the FBI to process an application?

A It fluctuates depending on what their workload is.

Q During this time period, the end of January or the beginning of February 1977, how long was it taking?

A I guess we want to use the schedules.

Q I can't figure out from the data you have presented.

A Basically, Lloyd, Carr's people were placed on our computer system on 2-10. The total number of people on the 2010 run was --

Q 1,093?

A Yes, 1,092. Of the 1,093 as of yesterday, 943 of those people had been approved. Roughly it's taking 36.1 days to get the 2010 people approved.

Q And Lloyd, Carr took what, 48.8?

A Lloyd, Carr took 48.4. A part of the reason for the delay was the check that was not honored by the bank.

Q Did you ever investigate the circumstances of why the bank wouldn't honor the check?

A No, I did not.

Q Were you ever told what happened with respect to the check and the bank?

A No.

Q Have you ever received instructions from anyone at the Division of Enforcement not to process AP applications of a particular dealer other than Lloyd, Carr?

A. I can't remember the circumstances but I believe certain applications of certain firms I had been asked to hold out.

Q. Do you recall the names of those firms?

MR. LEVIE: Objection. It would be irrelevant, Your Honor. He has testified as to their being no holds placed by Division of Enforcement people with respect to Lloyd, Carr.

JUDGE POINTER: I beg your pardon, Mr. Levie, I think his testimony was to the effect because of the way Mr. Hecht placed the question to him, that any companies other than Lloyd, Carr, leaving the implication that such a stay was placed on Lloyd, Carr.

I would like for Mr. Paulek to explain for the record whether the applications of Lloyd, Carr personnel were delayed at the request of any other division within the Commission?

THE WITNESS: I am sorry, I did sort of misunderstand. We did not hold up Lloyd, Carr's application other than to make certain that the $20 fee was received on each application as shown in that one exhibit there, there are some individuals who we still do not have the $20 fee on and as a consequence one of those people is ready for approval, I just don't have

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the money, and that is the only thing holding up his application right now.

BY MR. HECHT:

Q But it took an average of 48.4 days of those that were filed and processed to completion.

A Right.

Q So if you counted in the people who weren't yet approved it's really substantially higher than 48.4 days on an average, isn't it?

A If you were to consider them, yes.

Q And then you drew this average up of 30 days, that included only accepted applications or all applications, including the open ones?

A Which schedule are you referring to?

Q You gave me a table here showing all of the AP applications received. We will use your January 27 one.

A Those we are only considering their approved application.

Q And then the 2-10 short would only be the approved applications of 30.8 days?

A That is correct.

MR. HECHT: I have no further questions.

JUDGE POINTER: One question from me.

The difference was 31 days and how many days for Lloyd, Carr, Mr. Paulek?

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MR. HECHT: 48.4.

THE WITNESS: 48.4 versus 36.1.

JUDGE POINTER: Again please.

THE WITNESS: 36.1.

JUDGE POINTER: Are you testifying that the longer time for Lloyd, Carr was due solely and exclusively to the check that was dishonored?

THE WITNESS: I can't really make a statement to that effect, but in part it would have had an effect on the processing. It would have delayed, in fact one individual's check only came in last week.

JUDGE POINTER: When this check was dishonored, are you notified of that fact or how does this come to your attention?

THE WITNESS: Only after it comes back from the Federal Reserve, through -- I am not exactly certain of the route. I believe the check came into Washington and then it was routed to me.

JUDGE POINTER: Routed to you after it was dishonored or before?

THE WITNESS: After it was dishonored.

JUDGE POINTER: What did you do when it came back dishonored, put a hold on the application?

THE WITNESS: I composed a letter which went to the individual applicants telling them the check was not honored and if they wished to have their application approved or considered they had to give me another check.

JUDGE POINTER: Thank you.

BY MR. HECHT:

Q And except for those persons who didn't furnish the checks according to your schedule, isn't it a fact most of those checks came in promptly once you notified them?

A Yes. They came in, I think that schedule would show -- I am not certain exactly. The letter to the individuals went out around February 21 which I believe is a Saturday. The second checks were deposited in Chicago right around March 1, 2, 3, some as late as the 8th or 9th.

There would have been some delay in actually depositing the check because the check would have come in, the administrative office wouldn't have know why the check was there, would have given it to our department to research and then forward it back to them for deposit.

JUDGE POINTER: Are you required to hold up issuing approval until a check has had time to clear?

THE WITNESS: No, I am not.

JUDGE POINTER: All right, nothing more from me.

Mr. Levie?

MR. LEVIE: May I have the court's indulgence for a minute please.

JUDGE POINTER: Off the record.

(Discussion off the record)

JUDGE POINTER: Back on the record.

RECROSS-EXAMINATION

BY MR. LEVIE:

Q Mr. Paulek, I show you what's been marked as Division Exhibit 35 for identification. Did you prepare that document?

A Yes, I did.

Q Is that document a summary of records kept in the Commission's official files?

A Yes, it is.

MR. LEVIE: Your Honor, I move Division Exhibit 35 into evidence.

MR. HECHT: Your Honor, I object. It was obviously prepared yesterday and for the course of this litigation and it is a document prepared in connection with the litigation, it is not proper to admit such a document into evidence.

JUDGE POINTER: The witness has been testifying from the document this morning.

MR. HECHT: Right. We did it for purposes of identification. I think that is fine rather than going through all the records there but I don't think the summary itself should be admitted.

JUDGE POINTER: We have had testimony concerning the document. I will admit it into the record and your comments will speak for themselves.

MR. HECHT: Please note my exception.

(Division Exhibit 35 was marked for identification, and received into evidence)

BY MR. LEVIE:

Q Mr. Paulek, were Lloyd, Carr personnel processed under the same criteria as AP applicants from other firms?

A Yes, they were.

Q Were Lloyd, Carr personnel who applied for registration as APs treated in the same manner as persons from other firms who applied for AP status?

A Yes, they were.

Q Were the AP applicants from Lloyd, Carr & Company in any way singled out for special treatment in any way by your office?

A Other than for the procedure for writing them individually, notifying them of the bounced check there were no other procedures taken out of the ordinary.

Q How many letters did you cause to be issued?

A I do not know that exactly because we had some trouble locating a couple of the letters. In fact, I think one of the letters, at least one of the letters has not gone out yet.

Q I show you Division Exhibit 5 and ask you if you can identify that document?

A. This is one of the letters that was sent out to Schuster, I believe it is, Michael Schuster.

Q. Is that your signature down at the bottom of Division Exhibit 5?

A. Yes, it is.

MR. LEVIE: Your Honor, I move Division Exhibit 5 into evidence.

MR. HECHT: Your Honor, no objection. I should point out it's the same as Division Exhibit 4 except it's addressed to a different party.

JUDGE POINTER: Division Exhibit 5 is admitted into the record.

(Division Exhibit 5 was received into evidence)

MR. LEVIE: I have no further questions, Mr. Paulek.

MR. HECHT: I have a few.

REDIRECT EXAMINATION

BY MR. HECHT:

Q. Mr. Paulek, you testified just now Lloyd, Carr was treated no differently than anyone else. You also testified on direct examination that normally checks are sent directly to you for processing.

A. That is correct.

Q. Isn't it a fact that in this case the AP fee of ml2

$7.20, the check was routed through Washington first?

A. I believe the check was for $7.60.

Q. Pardon me. And why was it routed through Washington first?

A. It was not routed through Washington first. It would have been deposited directly into the Federal Reserve Bank in Chicago. Only after it was not honored by the bank would it have been directed into Washington.

Q. What you are saying is that after you deposited the check it then went through to Washington?

A. The check would have cleared through normal channels and only after it was not honored would it have come to Washington and then back to me.

Q. Let the record reflect I am showing the witness Division Exhibit 11-A, and could he please take a look at that and identify when the check was not honored.

MR. LEVIE: Your Honor, would not the check speak for itself?

JUDGE POINTER: He has a copy of the check and if Mr. Paulek can't interpret it, we will have one of our able counsel do so.

THE WITNESS: I don't know the significance of the date here, but there is a date of February 10 on here. What that means I do not know. All I can tell you is the date we deposited the check which is on the back, which is February 2.

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BY MR. HECHT:

Q But the last date on the back of that check is February 10, am I right?

A. This is on the front of the check.

Q The last date on that check is February 10, isn't it?

A. Unless some of these other numbers have significance, which I am not familiar with.

Q But isn't it a fact you didn't write these people until February 21, 1977?

A. That is correct.

MR. HECHT: I have no further questions.

JUDGE POINTER: Mr. Paulek, for my enlightenment again, you deposited the check in the Chicago bank and it was dishonored and routed back to the Washington office and from here it was routed back to you in Chicago?

THE WITNESS: That is correct.

JUDGE POINTER: You sent a letter out on the 21st? Do you know when you received back the dishonored check?

THE WITNESS: Not with any certainty I do not.

JUDGE POINTER: Would it have been a week before you sent the letter out, ten days, two weeks?

THE WITNESS: It could have been as much as a week. The sending of those letters out-taxed my small staff and only by bringing in people from other departments was I able to handle that notice to the individuals. I normally do not have typists on my staff. They are people handling a clerical function and they are not hired to be typists, therefore I had to bring in staff from other departments to type this letter.

JUDGE POINTER: And you sent out 38 letters similar to the one you sent to Mr. Schuster and Ms. Shever?

THE WITNESS: I don't think the figure is exactly 38. It is roughly 38.

BY MR. HECHT:

Q Looking at Division Exhibit 5, aren't these form letters where you just have to put in the date and the address?

A You also have to put in the comment in there that the check was not honored. It is basically a form that is xeroxed off.

MR. HECHT: I have no further questions.

JUDGE POINTER: Thank you. Mr. Levie?

MR. LEVIE: No further questions, Your Honor.

JUDGE POINTER: Now, Mr. Hecht, you were going to tell me about some additional witnesses.

MR. HECHT: The witnesses we will have tomorrow, I am trying to line up. I am trying to line up three witnesses, Irwin Winston, the accountant who is now in Bridgeport, Connecticut, and I have told him to be on call and I am trying to get a hold of him; Tom Lobus and James Carr on rebuttal.

MR. LEVIE: Your Honor, when we appeared here yesterday, as I indicated, based on my conference with Mr. Hecht on Friday, I fully expected him to have witnesses here to testify yesterday. He did not.

Your Honor made it very clear on the record yesterday we were going to start today at 10 o'clock, put in six hours of testimony and continue with that schedule until the testimony was completed.

Yesterday also Mr. Hecht refused to outline his list of witnesses other than Mr. Labus.

Today he comes in with two witnesses and one Commission personnel which has carried us through until 10 of 3 and now he is again delaying and attempting to carry this over until tomorrow, at which point we don't know how many witnesses he will produce and how many additional witnesses he will announce he will call on the following day.

I think this is again a direct violation of the court's order of yesterday.

JUDGE POINTER: Let's hear Mr. Hecht's comments.

MR. HECHT: Firstly, the two witnesses today you made a motion to in effect exclude their testimony so basically as a practical matter there was very little they could testify to because the court took the position that their

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testimony wasn't relevant to this particular litigation, which I have no control over.

The third factor is that this hearing is down in Washington, these people are from Boston and Greenwich. If the hearing was in Boston they would be on telephone call. I can't and I will not have 20 witnesses waiting around. These people have a livelihood to earn whether or not the Staff realizes it or not and I put them here, I introduced them into evidence for what I felt was a relevant and proper purpose.

The court ruled and agreed with your objection that it was not relevant. I have no control over the court. I can only bring in the witnesses to testify. The court very specifically indicated with respect to Mr. Gill, whose testimony normally would have taken about 2-3 hours, that it felt evidence on this particular area was not relevant to this inquiry.

Now I have no control over the court.

JUDGE POINTER: Mr. Hecht, I regret that fact that you have left the good portion of this day open again because I hesitate to point it out but I think we have had a number of delays where occasioned by your other duties. I don't like waffling on a ruling I made this morning or yesterday afternoon. I would like to wind this hearing down and be finished with it.

You have two more witnesses that you want to put on?

MR. HECHT: I said there is three more that I am putting in tomorrow, Mr. Labus, Mr. Winston and Mr. Carr.

JUDGE POINTER: I suggest you get in touch with those parties right now and be prepared to start testimony at 8:30 tomorrow morning. I will be here and if there is no one else here I will close the lid on this hearing and send the transcript to the Commission.

MR. HECHT: Your Honor --

JUDGE POINTER: They may come here tonight and they can put themselves up in their own accommodations and we are ready to go.

MR. HECHT: Your Honor, I think what's fair is fair. I have objected strenuously to the location of the hearing here. The earliest flight down from Boston is an Eastern Airlines flight at 7:20 in the morning.

JUDGE POINTER: Is that correct, agreed to by both parties?

MR. LEVIE: I have no idea what the schedule is.

MR. HECHT: That is the flight they took this morning.

JUDGE POINTER: We will have a delay in a flight and then we are going to be going until noon.

MR. HECHT: Then let's go up to Boston.

JUDGE POINTER: Mr. Hecht, we are going to finish this hearing right here in Washington. Now you can call your parties, I am sure you have many things to discuss with them to interview them prior to your testimony, you will have the evening to do it. They can easily catch a plane out at 4-4:30 this afternoon and be here and in good shape tomorrow morning at 8:30.

If no one is here tomorrow at 8:30 I am concluding the hearing is finished.

MR. HECHT: Your Honor, I think 8:30 is an unreasonable hour and I think it's an unfair imposition.

JUDGE POINTER: It may be an unreasonable hour, but I am here at 7 each day, Mr. Hecht, and I realize this violates the Constitutional Rights of many people, so we are setting it at 8:30 and I think you can now talk with your witnesses who should be here at this moment ready to testify.

MR. HECHT: Your Honor, my position is the hearing shouldn't be here today. There is no witness from the Washington area testifying --

JUDGE POINTER: Don't argue about the ruling, it is made.

MR. HECHT: I will do my best. You are asking them to leave their families for a night and try to get in touch with them and I can't guarantee it. I have Mr. Cosulich out to call the people and that is one of the risks you run in an expedited hearing run in an inconvenient forum.

MR. LEVIE: I noted from Mr. Hecht's announcement

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he will have three individuals for tomorrow. Does that mean there will be no other individuals called by the respondents in this case?

JUDGE POINTER: If there is no one at 8:30 there won't be anyone called. If Mr. Hecht is planning to call additional witnesses they better be lined up in the hall ready to take that seat the moment we are finished with the other witnesses.

MR. HECHT: Your Honor, I stated my position on the record. I will get them here as early as I can. I think it is an infair imposition.

JUDGE POINTER: I think it is an imposition they are not here before 3 o'clock this afternoon.

MR. HECHT: Your Honor, I have no control over your rulings. You ruled they couldn't give testimony on a certain point which was the purpose of bringing two of them here, that is your ruling, and in effect you took away a day-and-a-half of testimony.

JUDGE POINTER: While we are on the record, this hearing will be concluded if there are no witnesses available to testify tomorrow morning at 8:30 in this same room.

(Whereupon, at 3:00 o'clock p.m., hearing in the above-entitled Matter was adjourned, to reconvene on Wednesday, March 23, 1977, at 8:30 a.m.)

R&T/RH

COMMODITY FUTURES TRADING COMMISSION

- X

In the Matter of:

JAMES A. CARR & CHARLES P. LE MIEUX III
d/b/a LLOYD, CARR & COMPANY, A PARTNERSHIP
84 STATE ST., BOSTON, MASSACHUSETTS 02109

LLOYD, CARR FINANCIAL COMPANY
84 STATE ST., BOSTON, MASSACHUSETTS 02109

JAMES A. CARR

CHARLES P. LE MIEUX III

Respondents

- X

No. 77-6

Eighth Floor Conference Room
Commodity Futures Trading Commission
2033 K Street, Northwest
Washington, D. C. 20036

Wednesday, March 23, 1977

The above-entitled Matter came on for further hearing, pursuant to adjournment, at 8:30 a.m.,

BEFORE:

HONORABLE GEORGE PAINTER, Administrative Law Judge.

APPEARANCES:

RICHARD LEVIE, Esq., and ELLEN MELTZER, Esq.	CFTC, 2033 K Street, Northwest, Washington, D.C., 20036; appearing on behalf of the Commission.
CHARLES HECHT, Esq.	Law Firm of Charles Hecht, 60 East 32nd Street, New York, N.Y., appearing on behalf of the Respondents.

P R O C E E D I N G S

JUDGE PAINTER: On the record.

This is a continued hearing in Docket 77-6.

Mr. Hecht, do you have any witnesses ready and available?

MR. HECHT: Mr. Irwin Winston is taking the 7:00 o'clock plane down. and as I called the Staff last night, there is a blizzard in the Northeast, and you could have heard of it on the 11:00 o'clock news.

What Mr. Carr is doing, he is driving down to La Guardia because Boston won't give him an answer whether it's open or closed. He left his home this morning at about 7:00 o'clock, is driving down to LaGuardia, which is open, and he will get on the first shuttle of American Airlines flight down.

JUDGE PAINTER: In view of the ruling yesterday, I hereby order the hearing officially closed at this time. Off the record.

(Whereupon, at 8:32 a.m., the proceedings were adjourned.)